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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 193

FORD MOTOR COMPANY, PETITIONER,

vs.

GEORGE HUFFMAN, INDIVIDUALLY, AND ON BE-
HALF OF A CLASS, ETC., ET AL.

No. 194

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, CIO, ETC., PETITIONER,

vs.

GEORGE HUFFMAN, INDIVIDUALLY, AND ON BE-
HALF OF A CLASS, ETC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 14, 1952

CERTIORARI GRANTED OCTOBER 13, 1952

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MOTION FOR SUMMARY JUDGMENT—

Filed April 11, 1951.

The plaintiff, George Huffman, etc., moves the court as follows:

- (1). That an order be entered herein granting the plaintiff a summary judgment in his favor, upon the complaint filed herein on the grounds that there is no genuine issue as to any material fact.

Herbert H. Monsky,
Attorney for plaintiff,
703 Realty Building,
Louisville 2, Kentucky.
CLay 4879

I hereby certify that I have served a copy of the foregoing motion upon Louis Seelbach, attorney for the defendant, Ford Motor Company; and Sol Goodman, attorney for the defendant, Local 862 UAW-CIO; and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, an unincorporated voluntary association, by and through its agent and International Representative, Roy Cantrell, individually, and as agent and representative, and as a representative member of said organization, by mailing by registered mail to each of them a copy of the above motion in envelopes, properly stamped and addressed and deposited in the United States mail this 10th day of April, 1951.

Herbert H. Monsky,
Attorney for plaintiff.

ANSWER OF FORD MOTOR COMPANY—Filed
April 18, 1951.

The defendant, Ford Motor Company, for answer to the complaint in this action states as follows:

1. The defendant admits the allegations of paragraph 1 of the complaint.
2. The defendant admits the allegations of paragraph 2 of the complaint.
3. The defendant admits the allegations of paragraph 3 of the complaint.
4. The defendant admits the allegations of paragraph 4 of the complaint.
5. The defendant admits the allegations of paragraph 5 of the complaint.
6. The defendant admits the allegations of the first sentence of paragraph 6 of the complaint and denies that it has knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 6 of the complaint.
7. The defendant admits the allegations of the first and second sentences of paragraph 7 of the complaint and denies that it has knowledge or information sufficient to form a belief as to the other allegations of paragraph 7 of the complaint.
8. The defendant denies that it has knowledge or information sufficient to form a belief as to paragraph 8 of the complaint.
9. The defendant admits the allegations of paragraph 9 of the complaint, except that it denies knowledge or information sufficient to form a belief as to the number of Louisville employees which the plaintiff seeks to represent as a class in this action.
10. The defendant admits the allegations of paragraph 10 of the complaint, except that it denies that it has knowledge or information sufficient to form a belief as to the number of so-called Class B employees referred to in the complaint.
11. The defendant admits the allegations of paragraph 11 of the complaint.

Answer of Ford Motor Company

12. The defendant admits the allegations of paragraph 12 of the complaint.

13. The defendant admits the allegations of paragraph 13 of the complaint.

14. The defendant admits the allegations of paragraph 14 of the complaint.

15. The defendant admits the allegations of paragraph 15 of the complaint.

16. The defendant admits the allegations of paragraph 16 of the complaint, except that it denies that the clauses in the contracts referred to in the complaint give any false seniority status to any employees of the defendant.

17. The defendant admits that the allegations contained in paragraph 17 of the complaint set forth the contention of the plaintiff; denies that the seniority provisions of the contracts referred to in the petition give any preference which is not founded upon differences existing in or as a part of the employer-employee relationship or are an improper or unauthorized exercise of the collective bargaining function or are improper or unsound.

18. The defendant denies the allegations of paragraph 18 of the complaint and asserts that in accordance with the Selective Service Act, 50 U. S. C. A. §308, the plaintiff, upon application to the defendant after his military service, was restored to a position of like seniority, status and pay.

19. The defendant admits that the contentions of the plaintiff are as set forth in paragraph 19 of the complaint, but denies that the Agent contracted away any seniority right of the plaintiff or any member of Class A upon any improper differences between the members of the Bargaining Unit, or at all.

20. The defendant files herewith and makes a part hereof, marked Exhibits "A", "B" and "C" respectively, the following pertinent agreements between Ford Motor Company and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO: (a) Supplementary Agreement re Veterans' Seniority dated July 30, 1946; (b) Agreement between Ford Motor Company and the U. A. W., CIO, dated August 21,

Answer of Ford Motor Company

1947; and (c) Agreement between Ford Motor Company and the U. A. W., CIO, dated September 28, 1949.

Wherefore, the defendant, Ford Motor Company, prays that the complaint in this action be dismissed, for its costs herein expended and for all further and proper relief.

Louis Seelbach,
Middleton, Seelbach, Wol-
ford, Willis & Cochran,
Counsel for Ford Motor Company.

Louis Seelbach states that he is one of counsel for the defendant, Ford Motor Company, and that he has, on April 18, 1951, served a copy of the within answer by mailing a copy thereof by United States Mail to Herbert Monsky, Realty Building, Louisville, Kentucky, and to Sol Goodman, Union Trust Building, Cincinnati, Ohio.

Louis Seelbach.

EXHIBIT "A"—Filed April 18, 1951.

SUPPLEMENTARY AGREEMENT

Section 13-(a) Any employee covered by the terms of this contract who left his employment with the Company subsequent to May 1, 1940, in order to perform training or service in the land or naval forces or the Merchant Marine of the United States, (or the armed forces of the allies) or who shall hereafter leave his employment for such purpose while the United States is at war, shall accumulate seniority during his period of such service subsequent to May 1, 1940. He shall be reinstated on the basis of his accumulated seniority, provided that he is discharged under conditions other than dishonorable and makes application for such re-employment within (90) days from the time he is relieved from such training and service in the land or naval forces, or the time of his completion of such service in the Mer-

TRANSCRIPT OF RECORD

Proceedings of the District Court of the United States for the Western District of Kentucky, at a regular term of Court begun and held at the Federal Court Room in the City of Louisville, on the 2d day of October, 1950.

Present: Honorable Roy M. Shelbourne, Judge of the United States District Court for the Western District of Kentucky.

George Huffmair, individually and on behalf of a class etc.,

Plaintiff,

v.

Ford Motor Company, a corporation; International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, an unincorporated voluntary association,

Defendants.

Be It Remembered that on the 21st day of February 1950 the above styled case was filed in this court, being Civil No. 2079, and the Petition is in words and figures as follows:

UNITED STATES DISTRICT COURT
 Western District of Kentucky
 (At Louisville)

George Huffman, individually, and on
 behalf of a class, etc.,

Plaintiff,

v.

No. 2079

Ford Motor Company, a corporation; Inter-
 national Union, United Automobile, Air-
 craft and Agricultural Implement
 Workers of America, CIO, an unincor-
 porated voluntary association,

By and through its agent and International
 Representative, Roy Cantrell, individu-
 ally, and as agent and representative,
 and as a representative member of said
 organization and

Local 862, UAW-CIO, an unincorporated
 voluntary association, by and through,
 its chief officer and agent, O. W. Ham-
 mons, individually, and as president of
 said Local 862, and as a representative
 member of said International Union and
 said Local 862;

Defendants.

PETITION FOR A DECLARATORY JUDGMENT—

Filed February 21, 1951.

The plaintiff, George Huffman, states that:

1. He brings this action seeking a declaratory judg-
 ment for himself, individually, and on behalf of the
 class (hereinafter defined and described) of which
 he is a member.
2. He is a citizen of the Commonwealth of Kentucky.

Petition for Declaratory Judgment

3. The defendant, Ford Motor Company, hereinafter referred to as, "Ford", is a corporation created and existing under the laws of the State of Delaware, and regularly licensed and carrying on its business (of manufacturing and assembling automobiles) in the Commonwealth of Kentucky—as well as in many other states and localities—and operating an establishment at or near Louisville in Jefferson County in the Commonwealth of Kentucky which establishment is referred to hereinafter as the "Louisville Works" in the operation of which Ford employs a large number of employees, hereinafter referred to as the "Louisville Employees."
4. The Louisville Employees are (with some exceptions or exclusions which do not concern us herein) represented by a statutory collective bargaining agency, hereinafter referred to as the "Agent", which has such status and functions as the exclusive Agent pursuant to the provisions of the federal statute, the Labor Management Relations Act, 1947 (29 U. S. C. 141 et seq.), and which has been authorized by procedures pursuant to such federal statute to negotiate with Ford for, and has negotiated and now has in effect a contractual provision requiring all Louisville Employees to be members of the labor organization which is the Agent.
5. The defendant, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, is commonly referred to as UAW-CIO and is hereinafter called the "International." It is a voluntary unincorporated association which is a labor organization which was created and which exists as the result of the voluntary association together of workers for collective bargaining purposes. It is a parent labor organization composed of workers associated together and organized in subordinate or local unions, chartered

Petition for Declaratory Judgment

as subordinate bodies by the International which consists of all the subordinate or local bodies, the members of which are (by virtue of being such) the membership of the International which is governed by the membership through and by means of representative and democratic processes. The International is the Agent of the Louisville Employees.

6. The International has a great and numerous membership totalling in excess of One (1,000,000) Million residing in and citizens of many different states and jurisdictions, by reason of all of which it is impractical to bring them before the court excepting by service of process upon a representative or agent of the International. Roy Cantrell is an agent and representative of the International in the jurisdiction of this court (having the title and duties of International Representative and functioning as such pursuant to the International's Constitution) upon whom process may be served which will adequately apprise the International of the pendency of this action.
7. The Louisville Employees are members of a subordinate or local union, chartered by the International as such, which is known as Local 862 thereof (hereinafter called the "Local"), which is a voluntary unincorporated association functioning as a labor organization and representing the Louisville Employees for collective bargaining purposes pursuant to a collective bargaining agreement (hereinbelow set forth) between Ford and the International. The Local has a numerous membership, numbering in excess of One (1,000) Thousand, citizens for the most part of Kentucky and Indiana, by reason of all of which it is impractical to bring them before the court excepting by service of process upon an officer, agent or representative of the Local. O. W. Hammons is the chief officer, agent or representative of the Local, being its duly elected and active president upon whom process may be

Petition for Declaratory Judgment

served which will adequately apprise the Local of the pendency of this action.

8. The aforesaid Roy Cantrell and O. W. Hammons as well as being agents of the International and Local, respectively, are both members of the International and the latter is a member of the Local, by reason of which facts both are made defendants herein, individually and as representative members of the class of members of the International and Local as well as in their official capacities.
9. The declaratory judgment sought herein presents to the court for its decision a controversy as to the validity of a clause of the collective bargaining agreements between Ford and the International currently in force and effect bearing upon the seniority rights of certain of the Louisville Employees. The plaintiff and approximately 275 other of the Louisville Employees constitute a class in that their positions on the seniority roster at Ford's Louisville Works have been lowered on said seniority roster to positions lower than his, and their true hiring-in dates would entitle them by reason of the contract clause of whose validity complaint is made herein. It is on behalf of the class of employees at the Louisville Works whose seniority rights have been infringed by the complained-of clause that plaintiff prosecutes this action, as well as on his own behalf. Such complaining class is hereinafter referred to as "Class A."
10. Among the Louisville Employees is another class of employees (hereinafter referred to as "Class B") of approximately the same number as Class A whose positions on the seniority roster at the Louisville Works have been improved and stand higher than their true hiring-in date would entitle them excepting for the application of the complained-of clause of the collective bargaining contracts.
11. The International and the Local, separately and jointly, approved and negotiated the complained-of

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clause which prefers Class B over Class A, and have been and are administering and enforcing said clause of, and said collective bargaining agreements, and are the appropriate and proper representatives of the members of Class B to represent the members of said Class B as a class in this action.

12. The matter in controversy exceeds, exclusive of interest, and costs, the sum of Three Thousand (\$3,000.00) Dollars.

13. The August 21, 1947 collective bargaining agreement between Ford and the International contains the following clause (Article VIII—Seniority, Sec. 13 (d)):

"It is further understood and agreed that, regardless of any of the foregoing, all veterans in the employ of the Company at the time the Contract is thus amended shall receive seniority credit for their period of service, subsequent to June 21, 1941, in the land or naval forces or Merchant Marine of the United States or its allies, upon completion of their probationary period."

14. Article VIII, Sec. 12 (c) of the September 28, 1949 collective bargaining agreement between the same parties reads as follows:

"Any employee who, prior to the effective date of this Agreement, has received the seniority credit provided for in Article VIII, Section 13 (c) or (d) of the Agreement between the Company and the Union dated August 21, 1947, or the comparable provisions in the supplementary agreement between the Company and the Union dated July 30, 1946, shall continue to receive such seniority credit."

15. The plaintiff has been an employee of Ford since on or about September 23, 1943. He was inducted into the military service of the United States on November 18, 1944 and was discharged on July 1, 1946 and within Thirty (30) Days after being so

Petition for Declaratory Judgment

discharged was re-employed by Ford with his seniority unimpaired and continuing to date from his original hiring in date as provided by the federal statute (50 U. S. C. App. 308).

16. Since his return to his employment, this plaintiff, and Class A employees generally, have been laid-off, or furloughed, at times and for periods when he and they would not have been so laid-off or furloughed excepting for the complained-of clause hereinabove cited. Class B employees have continued to work during these periods in his place and stead and in the place and stead of Class A employees who would have not worked excepting for the false seniority status acquired by them by means of the complained-of clause to the detriment of this plaintiff and the members of Class A. As a result thereof, he and they have suffered great monetary loss and damage in being deprived of their work and the consequent loss of pay they would otherwise have earned amounting to many thousands of dollars.
17. It is the contention of the plaintiff that the complained-of clause is improper and invalid and void, because it is outside the scope of the authority of a statutory collective bargaining agent to negotiate concerning matters which are not a proper subject of collective bargaining, and for the Agent herein (which is authorized to bargain for a class consisting of all workers employed in the bargaining unit as workers in that unit) to bargain for preference over one worker or group of workers within the unit in favor of another—whether either group be minority or majority—when such preference is not grounded upon differences existing in or a part of the employer-employee relationship, is an improper and unauthorized exercise of the collective bargaining function.
18. Plaintiff's seniority rights were preserved to him by the Congress of the United States so that he could return to his employment upon being dis-

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charged from the military service of the United States without impairment of his standing on the seniority roster and as if he had not been absent, and for the Agent herein to arrogate to itself power to go further than the Congress, and in so doing impair the status so preserved for this plaintiff, is an improper and unauthorized extension of the collective bargaining function into the domain of public policy and an encroachment into the areas in which the Agent is without authority to act.

19. Plaintiff contends that the Agent herein was and is without authority to contract away the seniority rights of the plaintiff or any member of Class A upon any basis of discriminations based upon differences between the members of the bargaining unit not relevant to the actual conditions of work and of employment to which they are to be applied, and differences relative to differing race, color or creed, or between World War I veterans and World War II veterans, or between blue-eyed workers and brown-eyed workers are not proper subjects of collective bargaining.

Wherefore the plaintiff, George Huffman, for himself and on behalf of the class for which he sues prays the court:

- (1) To permit him to prosecute this action for himself and as representative of and for the benefit of all members of Class A as defined herein.
- (2) To permit and direct the International and the Local herein to defend this action for themselves, for their members, and as representatives of all members of Class B as defined herein.
- (3) To adjudge, deem and declare that so much of the collective bargaining agreement in effect between Ford and the Agent herein as discriminates against and infringe the seniority rights of the members of Class A herein in favor of the members of Class B is null and void and invalid.
- (4) To order Ford to revise its seniority roster at the Louisville Works so as to eliminate all discrimination against Class A members of the bargaining unit and reflect

Petition for Declaratory Judgment

the true hiring-in date of all employees with due credit for their military service as provided and required by the federal statute, the Selective Service Act.

(5) For the costs of this action, and

(6) For all proper, general and consequential relief and orders which to the Court may appear meet and proper.

Herbert H. Monsky,
Counsel for Plaintiff,
703 Realty Bldg.,
Louisville 2, Kentucky.
CLay 4879

Commonwealth of Kentucky }
County of Jefferson } ss.

George Huffman, being first duly sworn, says that he is the above-named plaintiff; that he has read and knows the contents of the foregoing Petition for a Declaratory Judgment; that the same is true as he verily believes.

George H. Huffman.

Subscribed and sworn to before me this February 20, 1951. My commission expires August 30, 1953.

Herbert H. Monsky,
— N.P. J.C., Ky.

ORDER Entered May 23, 1951.

This cause coming on to be heard upon the pleadings and the motions for a summary judgment and arguments of counsel, and the Court, being sufficiently advised, is of the opinion that the collective bargaining agreement expresses an honest desire for the protection of the interests of all members of the union and is not a device of hostility to veterans. The Court finds that said collective bargaining agreement sets up a seniority system which the Court deems not to be arbitrary, discriminatory or in any respect unlawful.

Wherefore, it is ordered by the Court that the motion of the plaintiff for a summary judgment be, and the same is hereby, overruled, and the motions of the defendants for a summary judgment be, and the same are hereby, sustained, and it is further ordered that the action be dismissed at the cost of plaintiff, to all of which plaintiff, excepts.

Roy M. Shelbourne,
Judge.

Have seen.

Sol Goodman,
Atty. for UAW-CIO.

Louis Seelbach,
Atty. for Ford Motor Co.

**NOTICE OF APPEAL TO UNITED STATES COURT
OF APPEALS FOR THE SIXTH DISTRICT—Filed
June 20, 1951.**

Notice is hereby given that George Huffman, the plaintiff above named, hereby appeals to the United States Court of Appeals for the Sixth Circuit from the order entered by the Honorable Roy Shelbourne, Judge of the United States District Court, Western District at Louisville on May 23, 1951, sustaining the defendants' motion

Notice of Appeal, Etc.

for a summary judgment and dismissing the plaintiff's complaint at the plaintiff's cost.

Herbert H. Monsky,
Counsel for Plaintiffs,
703 Realty Bldg.,
Louisville, Kentucky.
CLay 4879.

STIPULATION AS TO RECORD ON APPEAL—

Filed July 13, 1951.

It is hereby stipulated by the Attorneys for the respective parties hereto,—the defendant, Ford Motor Company, being hereinafter referred to as "Ford"; the defendants, International Union, United Automobile, Aircraft and Agricultural Workers, its Local No. 862, and the individual members, officers, agents and representatives thereof being referred to collectively hereinafter as "UAW"—that the following shall constitute the transcript of record on appeal herein:

1. Petition.
2. Answer of Ford.
3. Plaintiff's motion for summary judgment.
4. UAW's motion for summary judgment.
5. UAW's answer.
6. Ford's motion for summary judgment.
7. Order (of May 23, 1951) sustaining defendants' motions for summary judgment and dismissing plaintiff's petition.
8. Only the relevant portions of the exhibits heretofore filed herein are to be copied, which relevant portions are stipulated to be:
 - A. That portion of Ford's Exhibit "A" designated therein as replacing Section 13 of Article VIII of the

Stipulation as to Record on Appeal

agreement between Ford and UAW dated February 26, 1946.

B. That portion of Ford's Exhibit "B" identified therein as Section 13 (entitled "Veterans") of Article VIII (entitled "Seniority") of the agreement between Ford and UAW, dated August 21, 1947.

C. That portion of Ford's Exhibit "C" identified therein as Section 12 of Article VIII of the agreement between Ford and UAW, dated September 28, 1949.

9. Notice of Appeal.
10. This stipulation.

Herbert H. Monsky,
Counsel for Plaintiff.

Middleton, Seelbach, Wol-
ford, Willis & Cochran,
Counsel for Ford.

Sol Goodman,
Counsel for UAW.

CLERK'S CERTIFICATE.

I, W. T. Beckham, Clerk of the United States District Court for the Western District of Kentucky, certify that the foregoing is a true and complete transcript of the record in Civil Action No. 2079 as called for by the Stipulation of record on appeal and as of record in my office.

W. T. Beckham, Clerk,
U. S. District Court.

PROCEEDINGS IN THE
United States Court of Appeals
FOR THE SIXTH CIRCUIT

CAUSE ARGUED AND SUBMITTED

(December 7, 1951—Before: HICKS, ALLEN and
MCALLISTER, J.J.)

This cause is argued by Herbert H. Monsky for appellant and by Sol Goodman and Louis Seelbach for appellees and is submitted to the court.

JUDGMENT .

(Filed March 3, 1952)

Appeal from the District Court of the United States for the Western District of Kentucky.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Kentucky, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed and the case is remanded to the district court for further proceedings in accordance with the opinion herein.

Exhibit "A"

chant Marine; and provided further that if such employee is unable to work by reason of physical disability during said period of ninety (90) days, his application may be made within ninety (90) days from the time disability has ended. Probationary employees shall be entitled to credit for the period of such service toward the completion of the probationary period and the accumulation of seniority thereafter.

(b) It is understood and agreed that none of the employees covered by this contract has been or is employed in a temporary position, within the meaning of that term as used in the Selective Training and Service Act of 1940, as amended.

(c) Any veteran of World War II who was not employed by any person or company at the time of his entry into the service of the land or naval forces or the Merchant Marine and who is a citizen of the United States and served with the allies and who has been honorably discharged from such training and service and who is hired by the company after he is relieved from training and service in the land or naval forces or after completion of service in the Merchant Marine shall, upon having been employed for six (6) months and not before, receive seniority credit for the period of such service subsequent to June 21, 1941, provided:

(1) Such veteran must apply for employment within ninety (90) days from the time he is relieved from such training or service in the land or naval forces or the time of his completion of such service in the Merchant Marine, and must obtain such employment within twelve (12) months from the time he is relieved from such training and service in the land or naval forces or the time of his completion of such service in the Merchant Marine.

(2) Such veteran shall not have previously exercised his right in any plant of this or any other company.

(3) A veteran so employed shall submit his service discharge papers to the company at the end of

Exhibit "A"

aforesaid probationary period of employment and the company shall place thereon in permanent form a statement showing that the veteran has exercised this right, such statement to be signed by representatives of the company and the Union, and a copy thereof placed in the employee's record and a copy furnished to the Union.

(d) It is further understood and agreed that, regardless of any of the foregoing, all veterans in the employee of the company at the time the Contract is thus amended shall receive seniority credit for their period of service, subsequent to June 21, 1941 in the land or naval forces or Merchant Marine of the United States or its allies, upon completion of their probationary period.

(e) Any employee covered by the terms of this contract who left the employment of the Ford Motor Company subsequent to May 1, 1940 in order to perform training or service in the land or naval forces or the Merchant Marine of the United States or any of the United Nations, and who has incurred a disability during the period of such service, which disability prevents him from doing the work of the position which he held at the time of his entry into said land or naval forces or said Merchant Marine shall be treated in the first instance only the same as any employee who has been incapacitated at his regular work by injury or compensable occupational disease, as set forth in Article VIII, Section 12 of the contract of February 26, 1946; such employee may be placed by the company on a job which the employee is able to do, irrespective of the employee's seniority provided that if the employee is capable of performing any one of a group of jobs in the seniority group in which he is to be placed he shall displace the employee with the least seniority in such group of job classifications, provided, however, that the employee shall take with him to such job all of his plant seniority and in the event of a reduction in force shall exercise his seniority on such new job as is provided for in Article VIII, Section 1B (Sub-Sections (1)-17)). An employee who desires to take advantage of this section must within thirty (30) days

Exhibit "A"

of the time he applies for reinstatement have furnished to the Employment Office of the company a certificate from the Veterans Administration that he sustained an injury while serving in the Armed Forces or the Merchant Marine of the United States or the armed forces of any of the United Nations. The Union will be advised of the identity of employees who apply for rights under this section and the nature and extent of the injuries sustained by such employees.

(f) Any veteran who, within one (1) year after his reinstatement or in the case of such reinstated veterans presently employed, within one (1) year from the date hereof, make application therefor to the Employment Office of the Company, shall be granted a leave of absence for a period of one (1) year in order to take advantage of the educational program offered by the Government in Public Law No. 16 and/or 346 of the Seventy-eighth Congress, and such leave of absence, upon application therefor to the Employment Office, will be extended from year to year while the veteran is attending school at Government expense. Seniority shall continue to accrue during such leave of absence provided the veteran makes application for reinstatement to employment within thirty (30) days from the time he has completed or discontinues the educational course, but in no event longer than his leave of absence.

EXHIBIT "B"—Filed April 18, 1951.

ARTICLE VIII

SENIORITY

VETERANS

Section 13. (a) Any employee covered by the terms of this contract who left his employment with the Company subsequent to May 1, 1940, in order to perform training or service in the land or naval forces or the Merchant Marine of the United States, (or the armed forces of the allies) or

Exhibit "B"

who shall hereafter leave his employment for such purpose while the United States is at war, shall accumulate seniority during his period of such service subsequent to May 1, 1940. He shall be reinstated on the basis of his accumulated seniority, provided that he is discharged under conditions other than dishonorable and makes application for such re-employment within ninety (90) days from the time he is relieved from such training and service in the land or naval forces, or the time of his completion of such service in the Merchant Marine; and provided further that if such employee is unable to work by reason of physical disability during said period of ninety (90) days, his application may be made within ninety (90) days from the time disability has ended. Probationary employees shall be entitled to credit for the period of such service toward the completion of the probationary period and the accumulation of seniority thereafter.

(b) It is understood and agreed that none of the employees covered by this contract has been or is employed in a temporary position, within the meaning of that term as used in the Selective Training and Service Act of 1940 as amended.

(c) Any veteran of World War II who was not employed by any person or company at the time of his entry into the service of the Land or Naval forces or the Merchant Marine and who is a citizen of the United States and served with the Allies and who has been honorably discharged from such training and service and who is hired by the Company after he is relieved from training and service in the land or naval forces or after completion of service in the Merchant Marine shall, upon having been employed for six (6) months and not before, receive seniority credit for the period of such service subsequent to June 21, 1941, provided:

(1) Such veteran must apply for employment within ninety (90) days from the time he is relieved from such training or service in the land or naval forces or the time of his completion of such service in the Merchant Marine, and must obtain such employment with-

Exhibit "B"

in twelve (12) months from the time he is relieved from such training and service in the land or naval forces or the time of his completion of such service in the Merchant Marine.

(2) Such veteran shall not have previously exercised this right in any plant of this or any other company.

(3) A veteran so employed shall submit his service discharge papers to that company at the end of aforesaid probationary period of employment and the Company shall place thereon in permanent form a statement showing that the veteran has exercised this right, such statement to be signed by a representative of the Company and the Union, and a copy thereof placed in the employee's record and a copy furnished to the Union.

(d) It is further understood and agreed that, regardless of any of the foregoing, all veterans in the employ of the Company at the time the Contract is thus amended shall receive seniority credit for their period of service, subsequent to June 21, 1941 in the land or naval forces or Merchant Marine of the United States or its allies, upon completion of their probationary period.

(e) Any employee covered by the terms of this contract who left the employment of the Ford Motor Company subsequent to May 1, 1940 in order to perform training or service in the land or naval forces or the Merchant Marine of the United States or any of the United Nations, and who has incurred a disability during the period of such service, which disability prevents him from doing the work of the position which he held at the time of his entry into said land or naval forces or said Merchant Marine shall be treated in the first instance only the same as any employee who has been incapacitated at his regular work by injury or compensable occupational disease, as set forth in Article VIII, Section 12 of the Contract of February 26, 1946; such employees may be placed by the Company on a job which the employee is able to do, irrespective of the employee's seniority provided that if the employee is capable of per-

Exhibit "B"

forming any one of a group of jobs in the seniority group in which he is to be placed he shall displace the employee with the least seniority in such group of job classifications, provided, however, that the employee shall take with him to such job all of his plant seniority and in the event of a reduction in force shall exercise his seniority on such new job as is provided for in Article VIII, Section 1B (subsection (1)-(17)).

An employee who desires to take advantage of this section must within thirty (30) days of the time he applies for reinstatement have furnished to the Employment Office of the Company a certificate from the Veteran's Administration that he sustained an injury while serving in the United States or the Armed Forces of any of the United Nations. The Union will be advised of the identity of employees who apply for rights under this section and the nature and extent of the injuries sustained by such employees.

(f) Any veteran who, within one (1) year after his reinstatement or in the case of such reinstated veterans presently employed, within one (1) year from the date hereof, make application therefor to the Employment Office of the Company shall be granted a leave of absence for a period of one (1) year in order to take advantage of the educational program offered by the Government in Public Law No. 16 and/or 346 of the Seventy-Eighth Congress, and such leave of absence, upon application therefor to the Employment Office, will be extended from year to year while the veteran is attending school at Government expense. Seniority shall continue to accrue during such leave of absence provided the veteran makes application for reinstatement to Employment within thirty (30) days from the time he has completed or discontinued the educational course, but in no event longer than his leave of absence.

EXHIBIT "C"—Filed April 18, 1951.

ARTICLE VIII

SENIORITY

VETERANS

Section 12. (a) Any employee covered by the terms of this Contract who had left his employment with the Company subsequent to May 1, 1940, in order to perform training or service in the Land or Naval Forces or the Merchant Marine of the United States (or the armed forces of the allies) and who, prior to the effective date of the Agreement, had been reinstated following such training or service in accordance with Section 13(a) of the Agreement between the Company and the Union dated August 21, 1947, or the comparable provisions of any preceding agreement shall be credited with seniority for the period of such training or service in computing his seniority under this Agreement.

(b) Employees now serving in the Armed Forces of the United States or employees who shall hereafter serve in the Armed Forces of the United States shall be entitled to reinstatement upon the completion of such service to the extent and under the circumstance that reinstatement may be required by the applicable laws of the United States, provided that any employee whose discharge from service is other than dishonorable, shall be accorded the same reinstatement rights as such laws provide in the case of persons honorably discharged. If the employee is unable to apply for reinstatement by reason of physical disability during the period within which such application is required by law to be made, application must be made within ninety (90) days from the time such disability is ended. For the purpose of this Section, it is understood that none of the employees covered by this Agreement has been or is employed in a temporary position within the meaning of that term as used in the Selective Service and Training Act of 1940, as amended, or as used in the Selective Service Act of 1948, and that probationary employees shall be entitled to credit for the period of such service toward the completion of the probationary period as well as the accumulation of seniority thereafter.

Exhibit "C"

(c) Any employee who, prior to the effective date of this Agreement, has received the seniority credit provided for in Article VIII, Section 13(c) or (d) of the Agreement between the Company and the Union dated August 21, 1947, or the comparable provision in the Supplementary Agreement between the Company and the Union dated July 30, 1946, shall continue to receive such seniority credit.

(d) An employee reinstated following a period of training or service in the land or naval forces or the Merchant Marine of the United States (or the armed forces of the allies) as provided in Sub-sections (a) and (b) of this Section who has incurred, during the period of such service, a disability which prevents him from doing the work of the position to which he would otherwise be reinstated shall be treated, in the first instance only, the same as an employee who has been incapacitated at his regular work by injury or compensable occupational disease as set forth in Section 11 of this Article. Such an employee may be placed by the Company on a job which he is able to do, irrespective of his seniority. If he is capable of performing any one of a group of jobs in the seniority group in which he is to be placed he shall displace the employee with the least seniority in such group of jobs. He shall take with him to such job all of his plant seniority and in the event of a reduction in force shall exercise his seniority on such new job as is provided for in Section 1-B, Sub-sections (1) through (18) of this Article.

To be eligible for the benefits set forth in this Sub-section, the employee must have furnished to the employment office for his plant within thirty (30) days of the time he applied for reinstatement a certificate from the Veterans' Administration, that he sustained an injury while in such service. The Union will be advised of the identity of employees furnishing such certificates, and of the nature and extent of the injuries sustained by such employees.

(e) Any reinstated veteran who makes application therefor to the employment office for his plant shall be granted a leave of absence for a period of one year in order to take fulltime institutional training at government

Exhibit "C"

expense under the educational program offered by the United States in Public Law Number 16 and/or Number 346 of the Seventy-eighth Congress, and upon application therefor to the employment office, shall be granted yearly extensions of such leave of absence while continuing such training. The employee shall be reinstated and credited with seniority for the period of such leave provided he makes application to the employment office for reinstatement within thirty (30) days from the time he has completed or discontinued such institutional training, and not later than five (5) days following expiration of his leave of absence.

MOTION FOR SUMMARY JUDGMENT—

Filed May 4, 1951.

Come now defendants, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, an unincorporated voluntary association, by and through its agent and International Representative, Roy Cantrell, individually, and as agent and representative, and as a representative member of said organization, and Local 862, UAW-CIO, an unincorporated voluntary association, by and through its chief officer and agent, O. W. Hammons, individually, and as president of said Local 862, and as a representative member of said International Union and said Local 862, and move the Court for a summary judgment, in their favor upon the complaint and answer filed herein, on the ground that there is no issue of fact.

Sol Goodman,
Attorney for Union.

ANSWER—Filed May 4, 1951.

Come now defendants, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, an unincorporated voluntary association, by and through its agent and International Representative, Roy Cantrell; individually, and as agent and representative, and as a representative member of said organization, and Local 862, UAW-CIO; an unincorporated voluntary association, by and through its chief officer and agent, O. W. Hammons, individually, and as president of said local 862, and as a representative member of said International Union and said Local 862, and for answer to the complaint herein, admit and deny as follows:

(1) Admit that this action is being brought by plaintiff for himself, but deny that it is being brought on behalf of anyone other than plaintiff; admit that plaintiff is a citizen of the Commonwealth of Kentucky, admit the allegations in paragraphs 3, 4, 5, 6, 7, 8, and without admitting any conclusions or without admitting any of the allegations heretofore denied and to the extent only of making up the issue, admit the allegations contained in paragraphs 9, 10, 11, 13, 14, 15, and 16.

(2) Defendants deny the allegations contained in paragraphs 12, 17, 18 and 19, and further generally deny each and every allegation in the petition heretofore admitted to be true.

(3) Defendants deny that plaintiff brings this action as a representative of others, and specifically states that plaintiff, as well as the others referred to by him and claimed by him as members of a class, are members of the defendant union and that under the Constitution of said union, plaintiff and said others are specifically prohibited from resorting to any court, unless and until they have exhausted all their rights and remedies within said union and that by reason thereof, plaintiff's petition does not set forth a cause of action, because it does not set forth that he has exhausted the remedies provided for him under the Constitution of said union. Said union Constitution specifically providing as follows:

Answer

"In no case shall a member or subordinate body appeal to a Civil Court for redress until he or it has exhausted his or its rights of appeal under the laws of this International Union. Any violation of this section shall be cause for summary suspension or expulsion, or for revocation of Charter, by a two-thirds vote of the International Executive Board."

(4) Defendants specifically deny that this Court has jurisdiction over this cause because all the defendants named are necessary and indispensable parties, and the defendant unions have many members who are citizens of the Commonwealth of Kentucky as is plaintiff, and by reason thereof, no diversity of citizenship exists. Plaintiff's cause of action is not grounded or based upon the federal statute referred to (58 USCA 308) because plaintiff does not claim that he was denied his rights to seniority during the period of one year, after reemployment; but contends that other parties are given equal seniority by reason of a bargaining contract. This action is, therefore, not brought under any federal law specifically giving jurisdiction to this Court and by reason thereof, this Court cannot entertain this action.

(5) For a further defense, defendants state that the provisions of the contract as set out in paragraphs 13 and 14 of the petition are valid provisions and were entered into between the employer on the one hand and the defendants as the bargaining agent for all employees on the other hand, and are fully effective as a valid bargaining contract.

Wherefore defendants pray that upon consideration the Court dismiss the petition herein on the ground;

(1) that the action was improperly brought,
 (2) that this Court has no jurisdiction over the cause of action, or

(3) if the Court decides that it has jurisdiction and that the action has been properly instituted; that the Court declare and find that the defendant unions as bargaining agents for the employees of the defendant

Answer

company entered into a legal, valid and binding contract, which contract is in full force and effect in accordance with the terms as set forth in said contract.

Sol Goodman,

Attorney for Defendants.

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, an unincorporated voluntary association.

By and through its agent and International Representative, Roy Cantrell, individually, and as agent and representative, and as a representative member of said organization and,

Local 862, UAW-CIO, an unincorporated voluntary association, by and through, its chief officer and agent, O. W. Hammons, individually, and as president of said Local 862, and as a representative member of said International Union and said Local 862.

MOTION—Filed May 22, 1951.

The defendant, Ford Motor Company, moves the Court for a summary judgment in its favor upon the pleadings in this action.

Louis Seelbach,
Middleton, Seelbach, Wolford, Willis & Cochran,
Attorneys for Defendants.

The detriment suffered by Huffman's class, as a class, was no different from that suffered by all the employees who were not veterans. Whether veterans or non-veterans, all Ford employees felt the impact equally.

Huffman stepped back on the seniority escalator at the place where he would have been had he remained in Ford's employ. His position among the non-veteran employees was the same as it was before military service. The integration of non-previously employed veterans among that whole group, of which Huffman's class was a part, therefore affected the other employees, who were not veterans, in the same way it affected Huffman's class of veterans. The non-veterans were retarded in their seniority, to the same extent as the veterans of Huffman's class were retarded.

The seniority thus provided for non-previously employed veterans affected, not merely Huffman's class alone, but all Ford employees without regard to their status as veterans. There was, therefore, no discrimination of any kind against Huffman's class. If discrimination exists at all, it was against all Ford employees whether veterans or non-veterans, and not against Huffman's class.

The length and breadth of Huffman's right under the Selective Training and Service Act was to re-enter employment without loss of seniority. This he did.

When re-entered, and when not "discharged from such position without cause within one year after such restoration" the statute was satisfied in full. This was done.

Thereafter, Huffman no longer has any preferential right under the statute. Huffman's viewpoint then became the same as the viewpoint of every other Ford employee, and he was no longer distinguishable from other Ford employees. His right then was no greater than the right of other Ford employees, whether veteran or non-veteran. The Court's opinion, however, has the effect of continuing forever the status which Huffman occupied "within one year after such restoration." It effectively prevents, after expiration of that one year, any adjustment of seniority rights which might adversely affect some previously employed ex-veteran. It extends the effect of the Selective Training and Service Act beyond the intention of Congress.*

The erroneous assumption is that after expiration of that one year, Huffman continues to be clothed with some type of preferential statutory right which makes him thereafter immune to an adjustment of seniority status of all the employees.

(2)

"Discrimination," as such, is not involved in the extension of limited seniority rights to non-previously employed veterans.

The word "discrimination" means to make a difference of treatment or favor of one as compared with others. Admittedly all discrimination is not unlawful. No law or reason prohibits seniority plans which dis-

*As pointed out in Ford's Brief (pp. 15-24), Huffman's claim of "lay-off" is not referable to the "one year after such restoration" because the pleadings involve only the time which has elapsed since "that one year after such restoration."

criminate between employees on the basis of such differences among them as competence, skill, sex, departmental status, date of employment and marital status.

Aeronautical Lodge v. Campbell, 337 U. S. 521, upholds "discrimination" against veterans in favor of Union chairmen upon the ground that the gain in continuity of administration is a benefit to all.

A contract giving greater seniority to married men than to single men, or greater seniority to men with children than to men without children, or greater seniority to men with eight children than to men with two children, by the same token discriminates in their favor, but that is lawful discrimination, discrimination which beneficially affects the relationship between the employer, and all the employees.

By a parity of reasoning, the extension of partial seniority to non-previously employed veterans, because of military service, beneficially affects the entire group of employees because,

(1) A legitimate concern of the Union, its members, all employees, and the employer, is to avoid low morale, dissatisfaction and friction among employees because of wide differences in seniority status;

(2) New employees, with previous military service, would be hard to obtain if they were penalized because of military service upon obtaining new employment;

(3) It is unfair and inequitable to give to some employees benefits because of military service, and not to give to the remaining employees all or some of the same benefits.

If veteran status is a sufficient basis for legislative discrimination, as exemplified by the Selective Training and Service Act, and other enactments respecting Civil Service status, pensions, and medical benefits for veterans, it follows that veteran status is also an appropriate basis for special treatment by contract, especially when that contract is negotiated on behalf of *all* employees—without distinction as to race, creed, religion, or Union affiliation—and is without any element of "hostility to veterans."

The statement in the opinion that,

"The end result for Huffman and those similarly situated is the same as if there had been deliberate hostility * * * it penalizes Huffman for working for Ford before his military service."

does not correctly describe the situation here. In fact, the end result for Huffman is no different than the end result for Ford non-veteran employees, and Huffman suffers no penalty which is not suffered to the same extent by every other non-veteran employee. Huffman loses nothing whatever because of service to Ford before military service, because he receives full seniority credit for time spent in Military Service.

The Court overlooks the fact that the Union here represented not only the employees in Huffman's class (those veterans previously employed by Ford) and the employees who had never previously worked for Ford (non-previously employed veterans), but also that large body of remaining employees who had never served in the Armed Forces at all (non-veterans).

OPINION

(Filed March 3, 1952)

Before HICKS, Chief Judge; ALLEN and McALLISTER, Circuit Judges.

ALLEN, Circuit Judge. The principal question presented by this appeal is the validity of a seniority provision in a collective bargaining agreement between appellee Ford Motor Company, the employer, and appellee International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO. Petition for declaratory judgment, and answers by both appellees were filed. All parties moved for summary judgment. The court sustained the motions of the appellees and dismissed the action.

The case arises out of the following facts, which are uncontradicted:

Huffman, the appellant, was employed by the Ford Motor Company September 23, 1943. He entered the military service of the United States November 18, 1944, and was discharged July 1, 1946. Within thirty days he was reemployed by Ford, as his petition states, "with his seniority unimpaired and continuing to date from his original hiring-in date as provided by the federal statute (50 U. S. C. App. 308)."

Huffman, a member of the CIO, is still employed by the Ford Motor Company. His petition for declaratory judgment alleges in substance that he and approximately 275 other employees at the Ford plant in Louisville, Kentucky, constitute a class whose positions on the seniority roster have been made lower than they rightfully would be under their true hiring-in dates. He alleges that employees of another class have had their positions on the seniority roster at the Louisville plant improved and stand higher than they rightfully would under their true hiring-in dates, due to a clause of the applicable collective bargaining contract between Ford and the CIO. These allegations are admitted by the CIO and by Ford with exception of the number of employees in each class.

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July 30, 1946, prior to Huffman's reinstatement, the CIO and Ford made the following agreement:

"Section 13-(a) Any employee covered by the terms of this contract who left his employment with the Company subsequent to May 1, 1940, in order to perform training or service in the land or naval forces ~~or~~ the Merchant Marine of the United States, (or the armed forces of the allies) or who shall hereafter leave his employment for such purpose while the United States is at war, shall accumulate seniority during his period of such service subsequent to May 1, 1940. He shall be reinstated on the basis of his accumulated seniority. . . ."

"(c) Any veteran of World War II who was not employed by any person or company at the time of his entry into the service . . . and who is hired by the company after he is relieved from training and service . . . shall, upon having been employed for six (6) months and not before, receive seniority credit for the period of such service subsequent to June 21, 1941, provided:

* * * * *

"(2) Such veteran shall not have previously exercised his right in any plant of this or any other company.

* * * * *

"(d) It is further understood and agreed that, regardless of any of the foregoing, all veterans in the employ of the company at the time the Contract is thus amended shall receive seniority credit for their period of service, subsequent to June 21, 1941 in the land or naval forces or Merchant Marine of the United States or its allies, upon completion of their preliminary period."

Contracts negotiated between Ford Motor Company and the CIO in 1947 and 1949 readopted substantially the same provisions as to seniority rights of veterans.

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Since the appellees both moved for summary judgment, the facts alleged in the petition must be taken as true unless by the admissions, depositions or other evidence introduced the contrary appears. *McCombs v. West*, 135 Fed. (2d) 601 (C. A. 5). But the material allegations of the petition were admitted by both appellees. This, therefore, was a proper case for summary judgment; *McComb v. Southern Weighing & Inspection Bureau*, 170 Fed. (2d) 526 (C. A. 4); *Harris Stanley Coal & Land Co. v. Chesapeake & Ohio Ry. Co.*, 154 Fed. (2d) 450 (C. A. 6); certiorari denied, 329 U. S. 761; and the question presented is one of law as to the validity of the collective bargaining contract under which Huffman and those similarly situated were deprived of their seniority in layoffs and furloughs in favor of veterans later employed but with longer military service.

Huffman alleges that the enforcement of these contracts results in discriminatory layoffs and furloughs of himself and those similarly situated. He contends that veterans with longer periods of military service but shorter periods of employment with Ford are favored above Huffman and his class. He therefore claims that the provisions of the contract are discriminatory and void as to him and those similarly situated because they give to veterans not employed at the time they entered military service seniority credits for their period of armed service after June 21, 1941.

The District Court, as the basis for dismissing the action, found: "... the Court, being sufficiently advised, is of the opinion that the collective bargaining agreement expresses an honest desire for the protection of the interests of all members of the union and is not a device of hostility to veterans. The Court finds that said collective bargaining agreement sets up a seniority system which the Court deems not to be arbitrary, discriminatory or in any respect unlawful."

Huffman first contends that the collective bargaining agreement violates rights of veterans previously employed by the Ford Motor Company, which were secured

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under the Selective Training and Service Act of 1940, 50 S. C. App., § 308.¹

We think the District Court correctly held that this contention could not be sustained. This statute, among other things, gives veterans protection within the framework of the seniority system plus a guaranty against demotion or termination of employment without cause for one year after reemployment. *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U. S. 275. But the Supreme Court in that case points out that a furlough or a layoff is not a discharge. The person laid off is put on a waiting list for reassignment. He has a right to be restored to work under specific conditions and insurance and other benefits continue to accrue to him. In the *Fishgold* case the court held that the statute was not violated by a slackening of work which caused the employee to be laid off by operation of a seniority system. It follows that the layoffs and furloughs alleged to have displaced Huffman and others similarly situated in favor of veterans who had been employed later but had been engaged in a longer period of war service, do not violate § 308, 50 U. S. C. App.

— A more difficult question is presented as to Huffman's second contention. This is that the CIO and Ford, in the contracts attacked, set up a seniority system which is unlawful because of discrimination. The statute, § 308, 50

1 "(b) In the case of any such person who, in order to perform such training and service, has left or leaves a position, other than a temporary position, in the employ of an employer.

"(B) if such position was in the employ of a private employer, such employer shall restore such person to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so;

* * * * *

"(c) Any person who is restored to a position in accordance with the provisions of paragraph (A) or (B) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration."

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U. S. C. App., is construed in the *Fishgold* case, *supra*; *Trailmobile Co. v. Whirls*, 331 U. S. 40; *Aeronautical Lodge v. Campbell*, 337 U. S. 521; but the proper scope of collective bargaining contracts has not been broadly adjudicated. In *Aeronautical Lodge v. Campbell*, discussed later, the change of bargaining contract alleged to be discriminatory was shown to be for the benefit of the entire union. Huffman's principal contention here is that the contract is not for the benefit of the entire union; that the union as bargaining agent was not authorized to contract away his seniority rights, and the rights of those similarly situated. He urges that such a contract cannot legally ignore the factors ordinarily considered relevant in establishing a seniority system, such as length of employment in the service of the particular employer, skill, ability, and merit. He attacks the provision under which some employees are given preference over others in case of layoff's because of military service entered into before employment, that is, upon the basis of matters unconnected with the employment, antedating it and in no way related to the interest of the union as a whole.

The question presented is not whether a legislature could have imposed this change in seniority provisions through the medium of statute. Enactments granting preferences to veterans both in the securing of employment and in ratings for civil service examinations have been passed and are constitutional, Section 459, 50 U. S. C. App.; *Fishgold v. Sullivan Drydock and Repair Corp.*, *supra*. Cf. Sections 486-10 and 486-13, Ohio General Code; *State ex rel. King v. Emmons et al.*, *State Civil Service Commission*, 128 Ohio St., 216. The question squarely presented is whether the union and management can by contract create preferential seniority in men not employed when they entered the armed services as against men, also veterans, who were employed when they entered the armed services.

The Ford Motor Company and the CIO contend that the case is decided in their favor by *Aeronautical Lodge v. Campbell*, *supra*, in which the Supreme Court upheld a collective bargaining contract which gave priority in

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layoffs to union officials over other employees. The court held that the provision giving seniority to officials of the union over workers employed earlier than such officials was valid upon the ground that the gain in continuity of administration of the union due to the retention of these officials in case of layoff was a benefit to the entire union membership. The court emphasized the importance of this feature of benefit to the union as a whole. Speaking of the necessity of continuity in service for shop stewards or union chairmen, the court said:

"Because they are union chairmen they are not regarded as merely individual members of the union; they are in a special position in relation to collective bargaining for the benefit of the whole union. To retain them as such is not an encroachment on the seniority system but a due regard of union interests which embrace the system of seniority rights."

The court declared "it would be an undue restriction of the process of collective bargaining (without compensating gain to the veteran) to forbid changes in collective bargaining arrangements which secure a fixed tenure for union chairmen, whereby veterans as well as non-veterans are benefited by promoting greater protection of their rights and smoother operation of labor-management relations." In making this decision the court pointed out that "All this presupposes, obviously," that the agreement construed "expresses honest desires for the protection of the interests of all members of the Union and is not a skillful device of hostility to veterans."

We see nothing in this ruling which validates contracts made without regard for the protection of the interests of all members of the union. We think that action which results in widespread discrimination is not justified by the lack of definite malice or hostility. Well-meaning desires, not dishonest in the sense of expressing deliberate hostility, may at times, due to failure to consider all pertinent factors, result in discriminatory measures. The

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end result for Huffman and those similarly situated is the same as if there had been deliberate hostility. No evidence was presented on the question but we assume that both the union and Ford, in executing this bargaining contract, had a well-meaning desire to protect veterans who had had no chance for employment prior to their service in the armed forces. But in so doing they clearly discriminated against other veterans who had entered the military service when already employed by Ford. We think such a contract is not authorized under the National Labor Relations Act.

Section 157, 29 U. S. C., provides that employees have the right to bargain collectively and "to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection." This means that in entering into labor contracts the bargainers must make their agreements with a view to the rights of the entire group bound by them, and not enter into agreements which discriminate against one part for the benefit of another. *Gauweiler v. Elastic Stop Nut Corp.*, 162 Fed. (2d) 448, 451 (C. A. 3). As pointed out in that case, which was approved by the Supreme Court in *Aeronautical Lodge v. Campbell*, *supra*, no discrimination existed against veteran-employees. "Discrimination," the court declared, "would obviously change the whole picture."

Under the National Labor Relations Act just as under the Railway Labor Act the bargaining representative of the employees rests under the obligation to exercise fairly the power conferred upon it in behalf of all those for whom it acts without discrimination. Cf. *Steele v. L. & N. Rd. Co.*, 323 U. S. 192, 202, 203.

It is true, as Ford asserts, that there is no discrimination under the present system between Huffman and the nonveterans of his class. As to nonveterans, he comes back into employment on the same step of the "seniority escalator" where he would have been if he had never been absent in the military service. *Fishgold v. Sullivan Drydock & Repair Corp.*, *supra*. Where the discrimination arises is between veterans, like Huffman, who were

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employed, left their employment to enter the armed services and were reemployed, in conformity with the statute, and veterans not employed prior to war service. All such veterans who subsequent to June 21, 1941, have served a longer time in the armed forces than Huffman and those similarly situated are given a preferential seniority under a contract provision which has no relevance to terms and conditions of work or the normal and usual subjects of contracts between union and employer.

This was the test laid down by the Supreme Court in *Steele v. L. & N. Rd. Co.*, *supra*, 203. In that case the Supreme Court reversed a decision of the Supreme Court of Alabama which upheld a contract between the union and the employer which discriminated against negro firemen. The court declared: "This does not mean that the statutory representative of a craft is barred from making contracts which may have unfavorable effects on some of the members of the craft represented. Variations in the terms of the contract based on differences relevant to the authorized purposes of the contract in conditions to which they are to be applied, such as differences in seniority, the type of work performed, the competence and skill with which it is performed, are within the scope of the bargaining representation of a craft, all of whose members are not identical in their interest or merit. . . . Without attempting to mark the allowable limits of differences in the terms of contracts based on differences of conditions to which they apply, it is enough for present purposes to say that the statutory power to represent a craft and to make contracts as to wages, hours and working conditions does not include the authority to make among members of the craft discriminations not based on such relevant differences. Here the discriminations based on race alone are obviously irrelevant and invidious."

While, as pointed out in *Aeronautical Lodge v. Campbell*, *supra*, there are variations in the use of seniority, such as plant seniority, shop seniority, seniority conditioned upon existence of a probationary period of employment, etc., we are cited to no case which approves the

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creation of seniority rights in a collective bargaining contract upon the basis of acts done or service rendered prior to entering upon the employment in which the seniority is claimed. We think this is "superseniority" just as the seniority claimed in *Trailmobile Co. v. Whirls, supra*, was superseniority. It penalizes Huffman for working for Ford before his military service.


Under the uncontradicted facts the seniority system as to Huffman and those similarly situated is discriminatory. Plainly a contract which, in case of layoff, prefers men without experience over men with experience, no other facts appearing and no other valid reasons for preference existing, is discriminatory. When an employee who entered the Ford plant in 1945 is retained in layoffs over Huffman, who entered in 1943, Huffman is discriminated against.

This is a case *sui generis*. From a feeling of generosity toward men called to the war, the union and the employer have united in a sweeping contract which ultimately and in ways probably not contemplated discriminates against veterans who also gave their all in the service of the country. To hold that this feature of the contract is valid is to open wide the door to agreements between union and company not in the interest of the union as a whole.

The contract is invalid as to Huffman and those veterans similarly situated.

The judgment of the District Court is reversed and the case is remanded for further proceedings in accordance with this opinion.

• McALLISTER, J., dissenting. I am of the opinion that the order of the district court dismissing appellant's petition should be affirmed for the reasons, as therein set forth, that the collective bargaining agreement expressed an honest desire for the protection of the interests of all members of the union; that it was not a device of hostility to veterans; and that the seniority system therein provided was not arbitrary, discriminatory, or unlawful.



PETITION FOR REHEARING BY FORD MOTOR COMPANY

(Filed March 21, 1952)

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United States Court of Appeals
FOR THE SIXTH CIRCUIT.

No. 11,448.

GEORGE HUFFMAN, INDIVIDUALLY AND ON
 BEHALF OF A CLASS, ETC.,

Appellant,

v.

FORD MOTOR COMPANY, AND
 INTERNATIONAL UNION, UNITED AUTOMO-
 BILE, AIRCRAFT AND AGRICULTURAL IM-
 PLEMENT WORKERS OF AMERICA; CIO,
 AN UNINCORPORATED VOLUNTARY AS-
 SOCIATION,

Appellees.

*Appeal from the District Court of the United States
 for the Western District of Kentucky
 at Louisville.*

PETITION FOR REHEARING
BY
FORD MOTOR COMPANY.

The Court erroneously held, in the March 3, 1952,
 Opinion, that the Ford contract unlawfully discrimi-
 nates against those who left Ford's employ to enter the

Armed Services and were later re-employed without loss of seniority. The holding is erroneous because:

(1) The contract affects employees who are non-veterans, in the same manner and to the same extent, as it affects the employees in Huffman's class.

(2) "Discrimination," as such, is not involved in the extension of limited seniority to veterans not previously employed.

(1)

The contract affects employees who are non-veterans, in the same manner and to the same extent, as it affects the employees in Huffman's class.

The Court said in the opinion:

"It is true, as Ford asserts, that there is no discrimination under the present system between Huffman and the non-veterans of his class * * *. Where the discrimination arises is between veterans, like Huffman, who were employed * * * and veterans not employed prior to war service."

It is not correct to say that "discrimination arises" between veterans in Huffman's class, on the one hand, and veterans not previously employed, on the other hand. The difference in treatment of the non-previously employed veterans, which the Court refers to as "discrimination," is actually between all Ford employees, veterans and non-veterans alike, on the one hand, and the non-previously employed veterans, on the other hand.

one here in question covering approximately a million workers, with employers such as Ford Motor Co., Kaiser Frazier Corporation, Hudson Motor Car Company, Chrysler Corporation and Bendix Aviation Corporation. This policy represents the considered judgment of workers and employers alike and has the support of veterans organizations and of the Government. It represents a decision to make special and admittedly well deserved provisions for the youthful veteran who never had a job before going into military service. It accorded such veteran consideration for training and qualification attained while in military service. It was decided to treat such veterans as men whose entry into their employment was delayed only by military service and to treat the event of his induction into service (probably the majority of the beneficiaries of this clause being youthful volunteers) as equivalent to having hired in at that time. Since he joined the other workers later they wrote a contract on the not unreasonable assumption that the same young man, had he been free, would have joined them earlier; to-wit, at the time he was actually inducted. They sought to avoid penalizing early military service by not letting it operate to defer the accumulation of his seniority which he might have otherwise accumulated. They adopted this course even though it afforded some slight prejudice to the few men who, after June 21, 1941, and after the President's declaration of unlimited national emergency, first hired in. The man who, voluntarily or otherwise, was early in military service was rewarded, and only at the expense of people who in the same period of national emergency headed for the security of a factory and possible deferment from the draft. Certainly it is not to be argued that this type of discrimination is either against public policy or not within the competency of the bar-

gaining representative to negotiate. The Court's decision not only violates reason but would also upset orderly and well established collective bargaining relationships requiring the rearrangement of hundreds of seniority lists.

II (b) (c) THE DECISION OF THIS COURT IS IN CONFLICT WITH ITS OWN AND OTHER DECISIONS AND WOULD MAKE COLLECTIVE BARGAINING IMPRACTICABLE BECAUSE UNDER THIS DECISION COURTS ARE AUTHORIZED TO SUBSTITUTE THEIR JUDGMENT FOR THAT OF THE NEGOTIATING PARTIES IN FINDING A REASONABLE SOLUTION TO AN INDUSTRIAL PROBLEM.

It is our contention that the decision in this case is in direct conflict with this Court's decision in the case of *Britt v. Trailmobile Co.*, 179 Fed. Reporter, 2d, 569, *certiorari denied* 340, U. S. 820, wherein the Court stated at page 572: -

"The appellants, however, contend that the agreement is discriminatory in that the original Trailmobile working force were permitted to date their seniority rights from the date of employment while the Highland men were forced to accept a later date. *Aeronautical Industrial District Lodge 727 v. Campbell*, 337 U. S. 521, 69 S. Ct. 1287, tells us, however, that the date of employment is not, under the Act, an inflexible basis for determining seniority rights; that discriminations in the process of a collective bargaining agreement which is wholly unrelated to a veteran's absence in the service, is not forbidden by the Act, and that it would be an undue restriction on the process of collective bargaining to forbid changes in collective bargaining arrangements whereby veterans, as well

Members of all three classes were members of the Union which negotiated this contract. The Union's duty was to adjust among these three classes, in some reasonably equitable manner, their respective conflicts in seniority. The purpose of the provision in question was to integrate into the existing seniority system those non-previously employed veterans who otherwise would have no seniority at all within the existing framework.

The situation is not like that in *Steele v. L. & N.*, 323 U. S. 192. There, the Union was composed of white employees only, and the contract purposely discriminated against negroes (not members of the Union) by making them ineligible to receive promotions and to hold certain positions. The Union's every act was hostile to the negroes.

Here, the Union represented both white and black, veterans who had previous employment experience, veterans without previous employment experience, and all remaining employees who were not veterans. No hostility to previously employed veterans of Huffman's class entered into this negotiation. No device was used to benefit the non-previously employed veterans at the expense of the previously employed veterans. Huffman suffered no more from this than the remaining employees who were not veterans. All Ford employees, whether veterans or non-veterans, suffered equally, and each equally contributed a portion of his seniority status to the non-previously employed veterans.

The opinion of the Court states Huffman's principal contention to be that the clause of the contract under attack is not for the benefit of the entire Union, and

the Court agreed with this contention. Herein we differ with the Court.

Referring to the case of *Steele v. L. & N.*, 323 U. S. 192, the opinion points out that the statutory representative of a craft may make contracts which may have unfavorable effects on some of the members of the craft represented and that variations in the terms of the contract based on differences relevant to the authorized purposes of the contract in conditions to which they are to be applied, such as differences in seniority, are within the scope of the bargaining representatives of a craft, all of whose members are not identical in interest or merit.

It is, of course, apparent that the interests of all members of a union cannot be identical. It is impossible to have unanimity of opinion and absolute similarity of treatment of all of the members of the group represented by any union. This being the case, discretion must be vested in the bargaining representative, and when this bargaining representative makes a contract with the union, as the representative of a bargaining unit of employees, a court should not substitute its discretion for that of the union, concurred in by the employer, unless the exercise of the discretion obviously violates the basic principles of collective bargaining.

The Union in the instant case was convinced that the giving of accumulated seniority for service in the armed forces, whether or not the employee had been previously employed by Ford, was beneficial to the group of employees as a whole. The reasoning behind

the belief of the Union is set forth beginning at page twenty-seven of the brief heretofore filed by Ford Motor Company. The provision of the contract, under attack giving accumulated seniority to service men is not peculiar to the Ford contract but has been agreed to, and inserted in many contracts between management and labor. To strike down this provision will cause incalculable confusion in seniority rosters now going back to 1941 and will create discord in the labor-management relations of the Ford Motor Company.

Seniority is a creature of contract, and not a matter of right. In the absence of contract, no seniority whatever exists. If bargaining representatives of all employees, having in mind differences which exist among the employees with respect to military service, choose to extend seniority rights to employees with prior military service for the purpose of preventing friction and dissatisfaction, and of improving conditions of employment, the Courts should not interfere and try to remake the contract for them.

The Kentucky Court of Appeals said in *Aulich v. Craigmyle*, 248 Ky. 676, 59 S. W. 2d 560, 563, that an employee's seniority right was a matter of contract between him and his Union, and,

"was in no sense a vested, contractual, or property right, justifying the court, either then or now, in interfering to preserve it."*

The Supreme Court of Tennessee, after hearing the same arguments which Huffman presented here,

*Approved in *N. & W. Ry. Co. v. Harris*, 260 Ky. 132, 84 S. W. 2d 69, and in *Cannon v. Brotherhood*, 262 Ky. 113, 89 S. W. 2d 620.

squarely held) in *Haynes v. United Chemical Workers*, 190 Tenn. 165, 228 S. W. 2d 101, that a similar contract, extending partial seniority credit to ex-veterans, not previously employed by the company, was not discriminatory, or invalid. It said†:

"It seems to us that the provisions of this Section, instead of being against 'public policy,' are in accord with the accepted policy of the State and Nation. It has been the policy of both the State government and the Federal government to give veterans preferences and other benefits not afforded to other citizens because of their military service

"The provision of the contract complained of herein, instead of being an exclusion of a specified group as was in the *Steele* case [*L. & N. v. Steele*, 323 U. S. 192], is, in effect, a provision in accord with the feeling of most of the people in the Country. To strike this provision down and say that it is void and against public policy, to include in a contract slight preference in favor of veterans, would be slapping the feeling of the people of the State and Nation in the face."

The District Court, Western District of North Carolina, on June 16, 1948, passed on exactly the same arguments, arising from the same Ford contract, in *Price v. Ford Motor Company*. The District Court upheld the contract and adjudged that this same agreement between Ford Motor Company and the same Union, was valid and binding upon all of the non-veteran Ford

†See also: *Tennessee Title Co. v. First Federal Savings & Loan Assn.*, 185 Tenn. 145, 203 S. W. 2d 697; *Jennings v. Jennings*, 91 N. E. 2d 899 (Ohio, 1949).

employees. For the Court's convenience, we have lodged with the Clerk a certified transcript of the record in that case.

CONCLUSION.

The Court should not strike down a bargaining agreement which, with consent of all employees involved, extends to a less favored group some of the benefits of seniority, thereby distributing the benefits of seniority more equitably among the employees.

The Court should withdraw that portion of the opinion which declares this part of the contract invalid, and it should affirm the opinion of the District Court.

We certify that this Petition is not filed for the purpose of delay.

Respectfully submitted,

LOUIS SEELBACH,

EUGENE B. COCHRAN,

Counsel for Ford Motor Co.

March 19, 1952,

Louisville, Ky.

PETITION FOR REHEARING BY U. A. W.—C. I. O.
(Filed March 22, 1952)

In the

United States Court of Appeals

For the Sixth Circuit

No. 11,448

GEORGE HUFFMAN, Individually and on
Behalf of a Class, etc.

Appellant,

vs.

FORD MOTOR COMPANY, ET AL.,

Appellees.

PETITION FOR REHEARING

On March 13, 1952, this Court, in an opinion by Allen, Circuit Judge, with a dissenting opinion by McCallister, Circuit Judge, rendered a decision reversing and remanding the decision of the District Court herein. This petition for rehearing is based upon the following controlling considerations, not taken into account by the Court in its decision, which, it is submitted, compel a result opposite to that reached by the Court:

I. THE DISTRICT COURT AND THIS COURT LACK JURISDICTION TO ENTERTAIN THE QUESTION OF THE LEGALITY OF VARIOUS PROVISIONS OF A COLLECTIVE BARGAINING AGREEMENT IN AN ACTION BROUGHT BY ONE OF THE EMPLOYEES WHO FALLS UNDER THE GROUP REPRESENTED BY THE BARGAINING REPRESENTATIVE.

II. THE DECISION OF THIS COURT:

a. VIOLATES STANDARDS OF COLLECTIVE BARGAINING RELATING TO VETERANS ENDORSED AND SUPPORTED ON A NATION WIDE BASIS BY GOVERNMENTAL AUTHORITIES, VETERANS ORGANIZATIONS, EMPLOYER ASSOCIATIONS AND LABOR ORGANIZATIONS, AND CARRIED INTO PRACTICE IN HUNDREDS OF COLLECTIVE BARGAINING AGREEMENTS;

b. IS IN CONFLICT WITH ITS OWN AND OTHER DECISIONS;

c. AND WOULD MAKE COLLECTIVE BARGAINING IMPRACTICABLE BECAUSE UNDER THIS DECISION COURTS ARE AUTHORIZED TO SUBSTITUTE THEIR JUDGMENT FOR THAT OF THE NEGOTIATING PARTIES IN FINDING A REASONABLE SOLUTION TO AN INDUSTRIAL PROBLEM.

The action was instituted by Appellant for declaratory judgment claiming that his seniority rights preserved to him by Congress were denied in the collective bargaining contract made between the Appellee Employer and Appellee Union (R. page 7 and 8, paragraph No. 18). This Court, in its opinion, in the paragraph at the bottom of page 3, found that the District Court correctly held that this contention of Appellant could not be sustained. The Court, in effect, then stated, that as a veteran, the Appellant had no greater rights than any other employee.

The Court in its opinion, then proceeded to hold that the Union and the Employer cannot by contract create seniority in men not employed when they entered the armed services, as against men also veterans, who were

employed when they entered the armed services. In effect, this Court has stated that the National Labor Relations Act forbids a Union and Company from making a contract providing a seniority system which gives privileges to new employees by reason of their prior services in the military forces of the United States. This Court held that to give an employee seniority status by reason of military services, is just as bad as denying an employee seniority by reason of his color.

The Court, having decided the primary issue as to Appellant's claim as a veteran against Appellant, the Court must consider the defense set up in (R. 24, par. 4), namely that:

I. THE DISTRICT COURT AND THIS COURT LACK JURISDICTION TO ENTERTAIN THE QUESTION OF THE LEGALITY OF VARIOUS PROVISIONS OF A COLLECTIVE BARGAINING AGREEMENT IN AN ACTION BROUGHT BY ONE OF THE EMPLOYEES WHO FALLS UNDER THE GROUP REPRESENTED BY THE BARGAINING REPRESENTATIVE.

In the case of *MacKay v. Loew's, Inc.*; 182 F. 2d, 170, the Ninth Circuit Court stated that the provision of the National Labor Relations Act insuring to employees the right to bargain collectively, creates no remedy for refusal to bargain collectively, except through unfair labor practice proceedings before the National Labor Relations Board. In *Studio Carpenters Local v. Loew's*, 182 F. 2d, 168, the Court stated that exclusive remedies for deprivation of rights to self-organization are contained in the National Labor Relations Act, and the provisions of the Act insuring right to bargain collectively could

not be invoked to support the District's Court jurisdiction.

In *Schatte v. International Alliance, etc.*, 182 F. 2d, 158, the Court set forth the rule that the exclusive remedy for commission of an unfair labor practice, prior to enactment of the Labor Management Relations Act was in proceeding before the National Labor Relations Board, and the same was true subsequent to such enactment, except insofar as District Courts were given jurisdiction over certain suits over injunction by the Government, etc.

In the case of *A. F. L. v. Western Union Telegraph*, 179 F. 2d, 535, at page 538, this Court stated that a cause of action for violation of a contract between the Union and the Company, is within the express provisions of Section 301(a) of the Labor Management Relations Act of 1947. But that section of the Act does not permit an individual employee to sue both the employer and the union because he claims that the contract they made should have been more beneficial to him:

In the case of *Western Union Telegraph Company v. N. L. R. Board*, 113 F. 2d, 992, at page 994, the Court stated that the Board found that the Union agreed to surrender its power to strike. The Board's decision was that by such conduct the Union had, in effect, made itself unable to continue to represent the workers. In this, the Circuit Court disagreed and stated:

"We are not prepared to go even as far as that; that is to hold that a Union, which without pressure or inducement from employers, should conclude that arbitration was always a better means than a strike ever could be, could not be a lawful collective bargaining agent under the Act."

If a Union, as a bargaining agent, may bargain away the rights of the employees to strike, upon what theory can a Court hold that the Union cannot enter into a collective bargaining contract which recognizes the special skill, training, etc. which a person had attained while serving in the armed forces, and for that reason, give them consideration in the seniority set-up?

We also call the Court's attention to the recent decision of the 4th Circuit in *Textile Workers Union of America CIO v. Arista Mills Co.*, 193 F. 2nd 529, wherein the Court considered the jurisdiction of the District Court under the Labor Management Relations Act of 1947, Sec. 301(a) etc. At page 533 of the opinion it stated:

"We do not mean to say that, merely because a bargaining contract may forbid" unfair labor practices, the courts have jurisdiction to afford relief against them under guise of relieving against breaches of contract. As we said in *Amazon Cotton Mill Co. v. Textile Workers Union, supra*, 'it is perfectly clear, both from the history of the National Labor Relations Act and from the decisions rendered thereunder, that the purpose of that act was 'to establish a single paramount administrative or quasi-judicial authority in connection with the development of federal American law regarding collective bargaining'; that the only rights made enforceable by the act were those determined by the National Labor Relations Board to exist under the facts of each case; and that the federal trial courts were without jurisdiction to redress by injunction, or otherwise the unfair labor practices which it defined.' We think it clear that parties may not by including a provision against unfair labor practices in a bargaining

agreement vest in the courts jurisdiction to deal with matters which Congress has placed within the exclusive jurisdiction of the National Labor Relations Board."

II (a) THE DECISION OF THIS COURT VIOLATES STANDARDS OF COLLECTIVE BARGAINING RELATING TO VETERANS, ENDORSED AND SUPPORTED ON A NATION WIDE BASIS BY GOVERNMENTAL AUTHORITIES, VETERANS ORGANIZATIONS, EMPLOYER ASSOCIATIONS AND LABOR ORGANIZATIONS AND CARRIED INTO PRACTICE IN HUNDREDS OF COLLECTIVE BARGAINING AGREEMENTS.

The seniority provision which is under attack before this Court was negotiated with the Ford Motor Company pursuant to a resolution of the International Convention of the International Union, UAW-CIO held in 1944. It embodies a collective bargaining policy universally endorsed and followed on a nation wide scale, as is evidenced by the following quotation from a publication of the U. S. Department of Labor entitled:

U. S. Department of Labor
RETRAINING AND REEMPLOYMENT
ADMINISTRATION

Federal Trade Commission Building
Washington 25, D. C.

STATEMENT OF EMPLOYMENT PRINCIPLES

... "To assist in this process of reintegration, to minimize the competitive disadvantage which is inherent in long-term absence from civilian employment, and to help veterans and other displaced workers to obtain and hold suitable jobs commensurate with their abili-

ties, the employment principles appearing in this brochure are offered for the guidance of Government management, labor, and every other factor of the national economy.

"These principles have been prepared by this Administration after consultation with an Advisory Committee consisting of representatives of labor, management, and veterans' organizations. The membership of this Committee is as follows: American Federation of Labor — Robert Watt, Frank P. Fenton, Boris Shiskin; Congress of Industrial Organizations — Ted F. Silvey and Meyer Bernstein; Railway Labor Executives' Association — A. E. Lyon and E. L. Doyle; Business Advisory Council to the Secretary of Commerce — Cyrus C. Ching and Walter White; National Association of Manufacturers — A. E. Whitehill and John M. Convery; U. S. Chamber of Commerce — T. W. Howard; American Legion — Ralph H. Labers and Elbert Burns; Disabled American Veterans — Millard W. Rice; Veterans of Foreign Wars — Omar B. Ketchum.

"In commenting on these principles, Secretary of Labor Lewis B. Schwellenbach stated that he wholeheartedly endorses the concepts underlying them and expresses the hope that they will be of real assistance to management and labor in all of their discussions. . . .

(13) . . . *"Newly hired veterans who have served a probationary period and qualified for employment should be allowed seniority credit, at least for purposes of job retention, equal to time spent in the armed services plus time spent in recuperation from service-connected injuries or disabilities either through hospitalization or vocational training."*

Pursuant to this policy the UAW alone negotiated in the neighborhood of 300 seniority clauses similar to the

as non-veterans, are benefited by promoting greater protection of their rights and smoother operation of labor-management relations. *Collective bargaining is a continuous process and a veteran becomes the beneficiary of those gains, the achievement of which is the constant thrust of collective bargaining.* Collective bargaining agreements are made by a bargaining agent selected by a majority of the working force and are binding upon all employees. One who benefits as the result of such collective agreements must, in the language of the Oakley case, accept not only its advantages but its limitations."

The Trailmobile case quite properly reaches a result different than that reached by the Court in *Steele v. L. & N. Railroad Co.*, 323 U.S. 191 which case the Court cites as authority in support of its decision in the present case. We submit that the *Steele* case is inapplicable to the present situation for in that case the Court stated that while the statute does not deny to a bargaining labor organization, the right to determine eligibility to its membership, it does require the Union in collective bargaining and in making contracts with the carrier, to represent non-union or minority union members of the craft *without hostile discrimination*. In that case the Court stated that for a Union, that represents both white and colored employees, to enter into a contract which discriminates against the colored, is an unlawful contract. It stated that the people in the Constitution and Congress in legislation, have always condemned discrimination by reason of race, creed or color. In the present case, the Court in its opinion has stated that legislative groups have always favored and approved the giving of benefits to veterans. How can we compare a giving to a person by

reason of military training, recognition in the seniority status, to a contract which discriminates by reason of creed or color?

Furthermore in the Steele case the Court found the action of the Union to be unreasonable and capricious. This is the proper test to be applied to a Union's action and this test has found support in many other decisions. *Order of Ry. Conductors v. Jones*, 239 Pac. 883 (1925); *Piercy v. L. & N. Ry.*, 198 Ky. 477; *Robinson v. Dahm*, 159 N. Y. Supp. 1053 (1916); *McMurray v. Brotherhood of R.R. Trainmen*, 50 F. (2d) 968, 970 (1931); *Shaup v. Grand International B. of L. E.*, 135 So. 327, 328 (1931); *Capra v. Local Lodge 76*, P. (2d) 739, 740 (1938); *Ryan v. N. Y. Central R.R.*, 255 N.W. 365, 368 (1934).

See also Note, *Collective Bargaining Agreements, The Seniority Clause*, 41 Col. L. Rev. 304 (1941) for cases cited at 316 and 317.

In the opinion of the Court, it is conceded that legislative bodies may give rights to former veterans, and in support thereof, is cited the case of *State, Ex Rel. King v. Emmons*, 128 Ohio State 216. Circuit Judge Allen concurred in that decision when a member of the Supreme Court of Ohio. It is our contention that the decision in the present case is in direct conflict with the reasoning of the *Emmons* case. We quote from that case at page 224.

"The point is made in the relator's argument that the allowance to veterans of twenty per cent. of the mark made on the written examination is arbitrary and unreasonable in that it makes no distinction between positions for which military training might reasonably be regarded as good preparation and those for which it might not. It is also urged that no difference

is made in the allowance to one who served only a day and to one who served for many months. There is force in these contentions. But if it be conceded that an *examination* to ascertain merit and fitness may consist of other inquiries, in addition to those relating merely to knowledge, can we say that the legislature is, without power to prescribe a reasonable weight to be given to military service? In our opinion the weight prescribed in this statute is neither so arbitrary or so unreasonable as to violate the constitution. We may not strike down the statute merely because, in our judgment, different allowances might be wiser. *While the benefit derived from military training varies, doubtless from case to case, we find ourselves unable to say that its value is so little in any case as to make the action of the legislature arbitrary and void.*"

The standard which the Court used in the *Emmons* case is the ordinary standard for judging the constitutionality of legislative action, namely, whether the distinctions and classifications drawn by the legislature have a reasonable foundation in fact. These same constitutional standards were by analogy applied in the *Steele* case and in the *Trailmobile* case to the action of labor organizations.

"We think that the Railway Labor Act imposes upon the statutory representative of a craft at least as exacting a duty to protect equally the interests of the members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates." *Steele v. L. & N. R.R.*, 323 U.S. 192 at 202.

These same criteria in the instant case require that a rational solution to the industrial problem involved,

namely the treatment of certain veterans, be found. In this connection the definition of reasonable or rational action found in the dissenting opinion of Brandeis, J. in *Quaker City Cab Co. v. Pennsylvania*, 277 U.S. 389, 406, is of interest:

"The equality clause requires merely that the classification should be reasonable. We call that action reasonable which an informed intelligent just-minded, civilized man could rationally favor."

Thus, although, for instance the solution found by the Union in the Trailmobile litigation was not necessarily the most reasonable; the result was at least rational. No more than this is required of economic legislation under the Equal Protection Clause of the Constitution and no more than this is required of a Union in a situation such as the present one.

It is quite clear that the Union in the instant case has completely satisfied this standard. Not only does the special treatment of veterans here under attack have a rational foundation in fact, but it seems clear that the solution to this problem adopted by the negotiating parties here as well as in innumerable other situations was the most reasonable treatment conceivable. And even should the Court disagree that the present solution was the most reasonable possible, it cannot substitute its judgment for that of the negotiating parties as long as the solution here found was at least rational.

For the Court to do otherwise would in effect make it impossible for a large union representing hundreds of thousands of workers to engage in collective bargaining. It is inevitable that such a union must represent classifications and factions within the total group which the

Union must try to do its best to represent fairly in the face of divergent interests. For a Court to substitute its own judgment for that of the negotiating parties when the result reached through the negotiations is eminently rational merely because the Court thinks that a more reasonable solution could have been found by the parties would make the job of a great labor organization impossible. Courts have recognized this in a large number of decisions. *Aden v. Louisville & N. R.R.*, 276 S.W. 511 (Ky. App. 1921); *Donovan v. Travers*, 285 Mass. 167, 188 N.E., 705 (1934); *Hartley v. Brotherhood, etc.*, 283 Mich. 201, 277, N.W., 885 (1938); *Yazoo v. Mitchell*, 173 Miss., 594; *Burton v. Oregon-Washington R. R.*, 148 Ore. 648, 38 P. (2d) 72, (1934).

Furthermore, we bring to the attention of the Court the fact that seniority systems are by their nature inherently discriminatory in many respects. Departmental seniority in many instances may cause hardships against those in other departments in case of layoffs. The worker with greater skill, but lesser seniority, is usually discriminated against. On the other hand, many contracts make provisions for exceptional workers, thus discriminating against those with greater length of service. A seniority system might well be based on the number of dependents a worker has. In that case, one with greater length of service but fewer dependents would be "discriminated" against. Unless seniority is artificially defined in terms of length of service on plant-wide basis, a great variety of systematic and regular methods for operating a seniority system is available to the negotiating parties, all of which must be sustained by a Court insofar as they are rational and do not evidence hostile or unreasonable discrimination against any group. To prevent the negotiating parties from exercising the widest

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possible discretion in this field would be to render meaningless the collective bargaining process. We submit that the present decision, if allowed to stand, would have this adverse effect.

We respectfully petition the Court for a rehearing. This Petition is presented in good faith and not for delay.

SOL GOODMAN,
1016 Union Trust Bldg.,
Cincinnati 2, Ohio,
Attorney for Appellee, UAW-CIO.

ORDER DENYING PETITIONS FOR REHEARING

(Filed April 15, 1952)

The petitions for rehearing are denied.

CLERK'S CERTIFICATE**UNITED STATES COURT OF APPEALS****FOR THE SIXTH CIRCUIT**

I, CARL W. REUSS, Clerk of the United States Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of record and proceedings in the case of *George Huffman, Individually, etc. v. Ford Motor Company, a Corporation, etc.*, No. 11,448, as the same remains upon the files and records of said United States Court of Appeals for the Sixth Circuit, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 6th day of June, A.D. 1952.

CARL W. REUSS,

Clerk of the United States Court of Appeals for the Sixth Circuit.

(SEAL)

SUPREME COURT OF THE UNITED STATES. OCTOBER TERM. 1952

No. 193

FORD MOTOR COMPANY, Petitioner,

vs:

GEORGE HUFFMAN, Individually, and on Behalf of a Class,
etc., et al.

ORDER ALLOWING CERTIORARI—Filed October 13, 1952

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1952

No. 194

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO,
etc., Petitioner,

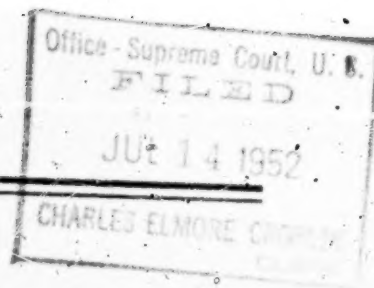
vs.

GEORGE HUFFMAN, Individually, and on Behalf of a Class;
etc., et al.

ORDER ALLOWING CERTIORARI—Filed October 13, 1952

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.



Supreme Court of the United States

OCTOBER TERM, 1952

No. 193

LIBRARY
SUPREME COURT, U.S.

FORD MOTOR COMPANY;

Petitioner,

v.

GEORGE HUFFMAN, Individually, and on Behalf of
a Class, Etc., and INTERNATIONAL UNION,
UNITED AUTOMOBILE, AIRCRAFT AND
AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA, CIO,

Respondents.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT**

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Supreme Court of the United States

OCTOBER TERM, 1952

No.

FORD MOTOR COMPANY,

Petitioner,

v.

GEORGE HUFFMAN, Individually, and on Behalf of a Class, Etc., and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND THE
ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE
UNITED STATES:

Your petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered March 3, 1952 (R. 29), reversing a judgment of the District Court of the United States for the Western District of Kentucky which had granted petitioner's motion for summary judgment and dismissed respondent Huffman's action (R. 26).

the seniority status upon the seniority of the employees in the industry rather than upon the hiring date with the particular employer.*

2. The decision of the Court of Appeals is in apparent conflict with the principles enunciated in applicable decisions of this Court.

The ruling that the subject of seniority rights for veterans not previously employed has "no relevance to terms and conditions of work or the normal and usual subjects of contracts between union and employer" is not in accordance with the principles enunciated in *Aeronautical Industrial District Lodge 727 v. Campbell*, 337 U. S. 521 (1949). There the Court pointed out that determination of seniority was a "part of the process of collective bargaining". This was recognized by Congress in using the term "seniority", without definition, in § 8 of the Selective Training and Service Act. It is necessary therefore to "look to the conventional uses of the seniority system in the process of collective bargaining in order to determine the rights of seniority which the Selective Service Act guaranteed the veteran" (p. 526). The Court there held that veterans' rights under the Selective Training and Service Act were not violated by provisions in a union agreement which granted to shop stewards and union chairmen a preferred seniority status as compared with other employees having an earlier hiring date. The provision was sustained as "not all uncommon,"

*See 21 Lab. Rel. Ref. Man. 20 (1948). Doubt is cast also upon provisions benefitting veterans not protected by the Selective Training and Service Act, such as those who were temporarily employed prior to military service. See 19 Lab. Rel. Ref. Man. 29 (1947). It has been estimated that veterans not protected by that Act amount to 80% of those released from military service. 15 Lab. Rel. Ref. Man. 2535 (1946). All references to Lab. Rel. Ref. Man. in this petition refer to the Manual of the Labor Relations Reporter.

and as being one which "surely ought not to be deemed arbitrary or discriminatory" (p. 528). It stated that "while there is not complete agreement on the advantage of seniority for union chairmen, it is certainly within the area of collective bargaining" (footnote 5). The decision was premised upon the fact that the provisions express "honest desires for the protection of the interests of all members of the Union and is not a skillful device of hostility to veterans"* (p. 529).

In *Steele v. Louisville & Nashville Railroad Co.*, 323 U. S. 192, at 203 (1944), the Court pointed out that the union was not barred from making contracts "which may have unfavorable effects on some of the members of the craft represented" which are "based on differences relevant to the authorized purposes of the contract in conditions to which they are to be applied." Thus "differences in seniority, the type of work to be performed, the competence and skill with which it is performed, are within the scope of the bargaining representation of a craft, all of whose members are not identical in their interest or merit * * *." This means that differences "in seniority", as well as differences in the type of work performed, may be made a basis for classification in the course of collective bargaining.

If the Court of Appeals had looked to the conventional use of the seniority system in collective bargaining, the propriety of the union's concern over the seniority status to be given veterans first employed upon their return to private employment would have been apparent. The propriety of such concern has been recognized by govern-

**Gauweiler v. Elastic Stop Nut Corporation of America*, 162 F. 2d 448 (3rd Cir. 1947), relied upon by the Court of Appeals (R. 36) involved the precise issue decided by this Court in the *Aeronautical Lodge* case.

OPINIONS BELOW

The majority opinion of the Court of Appeals and the dissenting opinion of Judge McAllister (R. 30-38) are reported in 195 F. 2d 170. The District Court rendered no opinion, but set forth in its judgment the reasons for its decision (R. 26).

JURISDICTION

The judgment of the Court of Appeals was entered on March 3, 1952 (R. 29) and its opinion was filed on the same date (R. 30). On March 21, 1952, within the twenty-day period thereafter, as provided by Rule 28 of the Court of Appeals, petitioner filed a timely petition for rehearing, which was denied on April 15, 1952 (R. 39, 69). Jurisdiction to issue the writ requested is found in the provisions of 28 U. S. C. Section 1254 (1).

QUESTION PRESENTED

Whether a provision in a contract between an employer and a union, as collective bargaining agent for its members pursuant to the National Labor Relations Act, as amended, is invalid because it grants seniority credit for the period of his military service to any employee who is a veteran of World War II but was not hired by the employer until after his return from the military service of the United States.

STATUTES INVOLVED

Section 7 of the National Labor Relations Act, as amended by the Labor Management Relations Act (29

U. S. C. Section 157), upon which the decision of the Court of Appeals was based, reads as follows:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection * * *."

Section 8 of the Selective Training and Service Act of 1940, as amended (50 U. S. C. App. Section 308), effective September 16, 1940, provides in substance that any person who leaves the employ of a private employer in order to perform military service, and who makes application for reemployment within a specified period after he is relieved from such service, shall be restored to his former position or one of like seniority, status and pay. It further provides:

"Any person who is restored to a position * * * shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority * * *."

STATEMENT

Respondent Huffman, a veteran of World War II who previously had been employed by petitioner, returned to petitioner's employment at its Louisville plant in July, 1946, after completing his military service (R. 6-7). He was immediately credited with the seniority he would have had if he had never left the petitioner's employment (R. 7). He is a member of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO (hereinafter referred to as UAW-CIO) (R. 3).

On February 21, 1951; respondent Huffman, individually and on behalf of approximately 275 other persons employed by petitioner at its Louisville plant, commenced this action against UAW-CIO and petitioner in which he sought a declaratory judgment of the invalidity of the provisions of the collective bargaining agreements between UAW-CIO and petitioner relating to seniority rights of veterans who had not been employed at the time of entry into military service.

The collective bargaining agreements were three in number. The first of these agreements, entered into on July 30, 1946, between petitioner and UAW-CIO as statutory bargaining representative of petitioner's employees (including respondent Huffman), contained the following provisions (R. 14, 15; R. 12):

"(c) Any veteran of World War II who was not employed by any person or company at the time of his entry into the service of the land or naval forces or the Merchant Marine and who is a citizen of the United States and served with the allies and who has been honorably discharged from such training and service and who is hired by the company after he is relieved from training and service in the land or naval forces or after completion of service in the Merchant Marine shall, upon having been employed for six (6) months and not before, receive seniority credit for the period of such service subsequent to June 21, 1941 * * *

* * *

"(d) It is further understood and agreed that, regardless of any of the foregoing, all veterans in the employee (sic) of the company at the time the Contract is thus amended shall receive seniority credit for their period of service, subsequent to June 21, 1941 in the land or naval forces or Merchant

Marine of the United States or its allies, upon completion of their probationary period."

Identical provisions were embodied in the second agreement, dated August 21, 1947, negotiated with petitioner by UAW-CIO, as bargaining representative of petitioner's employees (R. 17-18; R. 12). The third agreement with petitioner, dated September 28, 1949, preserved to all veterans then employed by petitioner the seniority rights provided in the 1946 and 1947 agreements (R. 21; R. 12-13). Both the 1947 and 1949 agreements provided that they were to become effective upon ratification by the union membership and presumptively they were so ratified.

The complaint alleges that respondent Huffman was employed by petitioner on September 23, 1943, was inducted into the military service of the United States on November 18, 1944, was discharged therefrom on July 1, 1946 and, within thirty days thereafter, was re-employed (R. 6-7). It is further alleged that, by reason of the above-mentioned contract provisions, the positions on the seniority roster of the plaintiff, and of other employees at the Louisville works on whose behalf this suit was brought, have been changed to positions lower than those to which their hiring dates would otherwise have entitled them (R. 5). Plaintiff and the class whom he represents are alleged to have been laid off or furloughed at times and for periods when, except for such provisions, they would not have been laid off or furloughed (R. 7).*

*Note, in this connection, that the complaint does not limit the class represented by plaintiff to veterans employed by petitioner prior to their military service. The description of the class is broad enough to cover non-veterans, as well as veterans whose seniority standing is altered by the above-mentioned provisions under attack (R. 5).

The complaint charges that (1) the provisions in question were not within the contracting authority of the union, and (2) the provisions, as applied to the plaintiff individually, unlawfully impaired seniority rights preserved to him by the Selective Training and Service Act (R. 7-8).

On motions by all parties for summary judgment (R. 10, 22, 25) the District Court dismissed the complaint. The judgment stated that the Court was of the opinion that "the collective bargaining agreement expresses an honest desire for the protection of the interests of all members of the union and is not a device of hostility to veterans" and that the Court "finds that said collective bargaining agreement sets up a seniority system which the Court deems not to be arbitrary, discriminatory or in any respect unlawful" (R. 26).

The Court of Appeals reversed. The majority opinion (by Allen, C. J., concurred in by Hicks, Ch. J., R. 30-38) rejected Huffman's contention that the provision "violates rights of veterans previously employed by the Ford Motor Company, which were secured under the Selective Training and Service Act of 1940" (R. 32-3). But it sustained his contention that the provision was invalid, as discriminatory, because "veterans with longer periods of military service but shorter periods of employment with Ford are favored above Huffman and his class" and "veterans not employed at the time they entered military service" were given "seniority credits for their period of armed service after June 21, 1941" (R. 32). The Court held that length of military service "has no relevance to terms and conditions of work or the normal and usual subjects of contracts between union and employer" (R. 37). For this reason, the Court held that the provisions were not authorized under the National Labor Relations Act which

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requires that the bargainers in entering into labor contracts "must make their agreements with a view to the rights of the entire group bound by them, and not enter into agreements which discriminate against one part for the benefit of another" (R. 36).

In effect, the Court has ruled that provisions concerning "seniority in layoffs and furloughs in favor of veterans later employed" (R. 32) may not be related to length of military service for the reason that such provisions, as a matter of law, are deemed not to have been made for the protection of the interests of all members of the union but to discriminate against one group of employees for the benefit of another.

Judge McAllister dissented on the grounds "that the collective bargaining agreement expressed an honest desire for the protection of the interests of all members of the union; that it was not a device of hostility to veterans; and that the seniority system therein provided was not arbitrary, discriminatory, or unlawful" (R. 38).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred;

1. In holding that the provisions of the agreement between UAW-CIO and petitioner were invalid because they

(a) Had no relevance to terms and conditions of work or the normal and usual subject of contracts between union and employer;

(b) Dealt with a subject with respect to which the union had no authority to negotiate;

- (c) Were discriminatory despite the absence of any malice or hostility;
 - (d) Were made without regard for the protection of all members of the union or the union as a whole;
 - (e) Were based upon the period of military service of veterans not previously employed;
2. In reversing the summary judgment granted on petitioner's motion;
 3. In failing (upon reversal) to remand the case for a trial on the issue of validity.

REASONS FOR GRANTING THE WRIT

1. The question involved is one of general importance in the field of collective bargaining under the National Labor Relations Act which should be settled by this Court.

The agreements containing the provisions held invalid govern the relations between petitioner and approximately 90,000 union employees. Like provisions are contained in about 300 different collective bargaining contracts between UAW-CIO and other employers, as well as in many other collective bargaining contracts entered into by other unions. The employers which are parties to such contracts include many well-known companies: Chrysler Corporation, Hudson Motor Car Company, Kaiser-Frazer Corporation, Bendix Aviation Corporation, Electric Auto-Lite Company, Minneapolis-Moline Power Implement Company, Houdaille-Hershey Corporation, Bohn Aluminum and Brass Corp., Bell Aircraft Corp., North American Aviation, Inc., American Thread Co., Cluett, Peabody & Co., Inc., Forstmann Woolen Co., Nashua Manufacturing Co., Sargent & Co.,

Emerson Electric Mfg. Co., Landers, Frary & Clark, Allis-Chalmers Manufacturing Co., American Locomotive Co., Fall River Textile Manufacturers Ass'n and New Bedford Cotton Manufacturers Ass'n. Unions which are parties to such contracts include United Textile Workers (AFL), Textile Workers Union (CIO), Federal Labor Union (AFL), Furniture Workers (CIO), Food, Tobacco and Agricultural Workers (CIO), Office and Professional Workers (CIO), United Electrical Workers (CIO), and Steelworkers (CIO). Contracts of this type cover the day-to-day relations between such companies and unions and many thousands of employees.

The possible implications of the decision are staggering. If the decision stands, the claims for damages against unions and employers by reason of their compliance with such provisions during the period prior to the declaration of invalidity might well run into hundreds of millions of dollars.*

The decision of the Court of Appeals for the Sixth Circuit has nationwide implications, but has no binding effect upon other courts in other circuits. As a result, both unions and employers are placed in a serious dilemma. While some of the contracts affect employees located exclusively within the Sixth Circuit, other contracts affect employees located

*Petitioner and UAW-CIO are already met in this case with an application filed in the district court by respondent Huffman and other employees with claims asserting liabilities aggregating approximately \$150,000. The Louisville Plant (at which these applicants work) is one of petitioner's smallest plants. Petitioner has some 70,000 union employees who work within the Sixth Circuit. It is estimated upon the basis of the liabilities so asserted that total claims against UAW-CIO and petitioner might approximate \$20,000,000. The claims for damages in this connection arise in consequence of the possible frequency and extent of lay-offs, illustrated by the repercussions of the steel strike.

exclusively outside of the Sixth Circuit, and some, as in the case of petitioner's contract, affect many employees who are exclusively within the Sixth Circuit as well as many employees who are located exclusively outside of the Circuit. Only this Court, on certiorari proceedings, can settle the question on a nationwide basis.

If this Court should, however, deny certiorari here, and thus refuse to settle the question at this time, the petitioner, UAW-CIO, other companies and unions, and thousands of other employees would be placed in an impossible position. On the one hand, they might choose to accept the decision of the Sixth Circuit Court of Appeals as the law of the land and, accordingly, eliminate this contractual provision throughout the country, reshuffle their current seniority lists in all circuits, and lay off the new group of employees everywhere. Or, they might choose to regard the decision of the Sixth Circuit Court of Appeals as erroneous, and, accordingly, cancel this contractual provision only within the Sixth Circuit, reshuffle their lists and lay off new groups of employees only within that Circuit. Even this reshuffling would be at the risk of future decisions in other circuits with which this Court might agree and thus establish the law of the land to be contrary to the decision of the Sixth Circuit.* In that event, the new group of employees laid off in the Sixth Circuit by reason of this decision would undoubtedly assert claims against the employers and the unions. In any event, so long as this Court does not undertake to review the question at issue, potential claims against companies and unions will grow no matter what course the

*One district court, in the Fourth Circuit, has already sustained the contract provisions involved in this case, but no appeal has been taken from its decision. See p. 19, *infra*.

employers and the unions may feel obliged to follow pending authoritative decision on this question by the Supreme Court of the United States; and, in the meantime, the seniority status of a very large group of employees is in doubt. They have no way to resolve that doubt except by litigation.

Until this Court authoritatively settles the question, it is possible that many companies and unions, in an effort to minimize the risk of many claims, may endeavor to reach an agreement for the elimination of such provisions from their current contracts outside of the Sixth Circuit. But, in the case of such collective bargaining on this important issue, disagreement—particularly where one party views the Sixth Circuit decision as erroneous and likely to be reversed while the other party does not—might very well arise which could result in strikes and protracted periods of labor unrest. The situation clearly calls for a decision by this Court at this time.

The opinion of the Court of Appeals has other broad implications. It casts serious question upon the validity of many other types of provisions commonly adopted in negotiated labor contracts. For example, differentiations affecting particular employees either favorably or unfavorably upon the basis of the comparative economic circumstances of the members of the union as a whole are jeopardized. Among such provisions are those providing for layoffs of married women without regard to their previous seniority rights,* those which provide seniority benefits favoring physically handicapped employees,** and those which base

*See *Hartley v. Brotherhood of Railway and Steamship Clerks, Etc.*, 283 Mich. 201, 277 N. W. 885 (1938), and *Schlenk v. Lehigh Valley R. Co.*, 74 F. Supp. 569 (D. N. J. 1947), *infra*, p. 18.

**B. N. A. "Collective Bargaining Negotiations and Contracts", 20:551, at p. 557.

mental agencies with respect to the very type of provisions involved in this case.

In 1945 the War Labor Board* directed the inclusion of similar provisions in certain labor agreements. *Murray Company and United Steelworkers of America, Local 2097* (CIO), 16 Lab. Rel. Ref. Man. 1864 (NLRB); *I. H. Williams & Company and United Office and Professional Workers of America, Local 64* (CIO), 17 Lab. Rel. Ref. Man. 1763 (NLRB).

In 1946, the Retraining and Re-employment Administration of the Department of Labor, after consultation with representatives of labor, management and veterans' organizations,** in an effort to assist in the process of reintegration, to minimize the competitive disadvantage apparent in long-term absence from civilian employment and to help veterans obtain and hold suitable jobs, published a statement of principles for the guidance of Government, management and labor (R. 58-59). Among the principles enunciated, which were unreservedly endorsed by Secretary of Labor Schwollenbach, was the following:

"(13) * * * Newly hired veterans who have served a probationary period and qualified for employment should be allowed seniority credit, at least for purposes of job retention, equal to time spent in the armed services plus time spent in recuperation

*In *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U. S. 275, 290 (1946), this Court gave great weight to the decision of that Board in sustaining the application to a veteran of the seniority provisions of a union contract.

**Those consulted included representatives of the following organizations: American Federation of Labor, Congress of Industrial Organizations, Railway Labor Executives' Association, Business Advisory Council to the Secretary of Commerce, National Association of Manufacturers, American Legion, Disabled American Veterans and Veterans of Foreign Wars.

from service-connected injuries or disabilities either through hospitalization or vocational training." (Italics supplied.)

It was in the light of such considerations that the UAW-CIO properly concluded that the provisions involved in this case were in the interest of the union as a whole. It was able, in the course of collective bargaining, to arrive at an agreement with petitioner for their inclusion in the contract for the benefit of its employees.

The general relevance of the subject matter of such provisions to the establishment of a fair and practical seniority plan is obvious. But for such provisions a veteran would find himself seriously penalized upon returning to or entering private employment after his military service. A veteran who was employed prior to his military service is protected by § 8 of the Selective Training and Service Act. The loss of seniority which he would otherwise have suffered is restored to him upon the basis of the length of his military service. Congress has thus removed a discrimination which otherwise would have existed against him by reason of his military service and would have caused the dissatisfaction and friction which lead to strikes. Precisely the same considerations call for comparable provisions for the protection of the veteran who entered military service prior to any private employment. If he had been able to enter private employment before being drafted, the time spent in military service would have measured his seniority status under § 8 of the Act. In order to avoid discrimination against him by reason of his absence in military service, the union has undertaken by collective bargaining to place him as nearly as possible in the same position he would have been in if he had been

able to enter private employment. It has thus avoided dissatisfaction and friction which lead to strikes.

The manifest fairness of the provisions of the Selective Training and Service Act in remedying an inequity in terms and conditions of employment is not disputed. The provisions obtained by the union through the process of collective bargaining have followed the same pattern. The relevance of both provisions to the terms and conditions of work is not destroyed by the fact that the seniority status conferred is related to the length of military service.

In the *Steele* case, this Court recognized that Congress had clothed the bargaining representative "with powers comparable to those possessed by a legislative body both to create and restrict the rights of those it represents" (323 U. S. at p. 202). Accordingly, for the purpose at hand, the limitations upon the powers of the bargaining agency are analogized to those imposed by the Constitution upon a legislative body to give equal protection to the interests of those for whom it "legislates". Application of this principle here would sustain the contract provision negotiated by the union on the basis of the same considerations which sustain the appropriateness of the comparable measure adopted by Congress in § 8 of the Selective Training and Service Act. The Court of Appeals, however, characterized the contractual provisions as "discriminatory" because the contract "prefers men without experience over men with experience *** no other valid reasons for preference existing" (R. 38). But lack of experience is not the basis of the classification. It is based upon the fact that military service prevented the veteran from working. If Congress considers that the length of military service should be credited towards seniority, even though the necessary result is to give seniority credit

for a period in which no added experience in private employment was acquired, it cannot be said that a collective bargaining agency, in reaching the same conclusion, must, as a matter of law, be deemed to have acted arbitrarily and not in the best interests of the members of the union as a whole. Surely, the contractual provisions cannot, as a matter of law, be held to be discriminatory by reason of the fact that they were created by collective bargaining rather than by legislation.

3. The decision is in apparent conflict with principles enunciated by other circuit courts of appeal and by state courts of last resort.

The principle applied in holding the provisions invalid on the ground of discrimination unduly limits the power of the union to bargain collectively for the best possible contract for its members as a whole where there are diversified or conflicting interests among its membership. The principle applied is in apparent conflict with the ruling of the Court of Appeals for the Seventh Circuit in *Foster v. General Motors Corp.*, 191 F. 2d 907 (1951), *cert. den.* 343 U. S. 906. There the union had negotiated provisions for vacation benefits during 1946 on the basis of gross earnings of the employees in 1945. As a result, the plaintiffs, who had been in military service during 1945, were not entitled to vacation pay in 1946. The validity of the contract was sustained notwithstanding the fact that the result appeared to be discriminatory against the plaintiffs. There had been no bad faith in the collective bargaining. The Court said (p. 911):

“* * * After all, a union as an authorized bargaining agent no doubt is legitimately interested in obtaining

the best possible contract for its members as a whole, and with numerous diversified interests among its members, especially, where its membership is large, there is nothing strange or unnatural if some segments of its membership are placed at disadvantage when compared with others. * * *

See also *Llewellyn v. Fleming*, 154 F. 2d 211 (10th Cir. 1946), cert. den. 329 U. S. 715; *Fries v. Pennsylvania R. Co.*, 195 F. 2d 445 (7th Cir. 1952); *Hartley v. Brotherhood of Ry. and Steamship Clerks, Etc.*, 283 Mich. 201, 277 N. W. 885 (1938); and *Schlenk v. Lehigh Valley R. Co.*, 74 F. Supp. 569 (D. N. J. 1947).

Until the decision by the majority in this case, the Court of Appeals for the Sixth Circuit had recognized that the mere presence of discriminatory provisions does not invalidate an agreement arrived at by collective bargaining. In *Britt v. Trailmobile Co.*, 179 F. 2d 569 (1950), cert. den. 340 U. S. 820, the agreement defined the seniority rights of two classes of employees. One class had been employed by a company which merged with Trailmobile. The other had been employed by Trailmobile prior to the merger. For a time after the merger both groups were afforded seniority rights by the union agreement upon the basis of their employment by both companies. The Trailmobile employees, constituting a majority, organized a new union which negotiated a new contract with the company. That contract established seniority of those employed by Trailmobile prior to the merger upon the basis of their original date of employment by that company. The seniority of those formerly in the employ of the merging corporation was based upon their employment from the date of merger only. The result was an obvious preference by the union of old

Trailmobile employees as against the other employees. In an opinion by Simons, C. J. (who did not participate in the present case) the Court said (p. 573):

"* * * Whatever we might think of the fairness of the differentiation, the discrimination was in pursuance of the bargaining process and not without some basis, forestalled a strike and was therefore not invalid. *Aeronautical Industrial District Lodge 727 v. Campbell, supra.*"

In *Haynes v. United Chemical Workers, CIO*, 190 Tenn. 165, 228 S. W. 2d 101 (1950), provisions in a contract between the union and employer granted to veterans of World Wars I and II seniority credit equal to twenty-five per cent of the time spent in the armed services during such wars, despite the fact that they had not previously been employed by the company. Other employees sought an adjudication that such provisions were invalid as impairing the seniority rights of non-veterans as well as those of veterans who had been employed by the company before entering military service. The validity of the contract was upheld.

The validity of the contract provisions involved in this case were sustained in an unreported decision by the District Court for the Western District of North Carolina in *Price et al v. Ford Motor Company*, Civil Action No. 564 (1948), from which no appeal was taken.

Thus, of the five federal judges and five state judges who have passed upon the validity of provisions identical or substantially identical with those in the present case, three of the former and all of the latter have sustained the

provisions. This is striking evidence of the reasonableness of the view that the union has not exceeded the scope of its bargaining power in this case.

CONCLUSION

It is submitted that the question involved is one of general public importance, that the decision of the Court of Appeals is in apparent conflict with the principles enunciated in applicable decisions of this Court and with the principles enunciated by other circuit courts of appeal and by state courts of last resort, and that it is therefore one which should be settled by this Court.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued by This Honorable Court to review the judgment of the Court of Appeals for the Sixth Circuit, that the judgment of the Court of Appeals be reversed, and that this Court grant such other and further relief as may be proper.

Respectfully submitted,

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Of Counsel.

Dated: July 14, 1952

Office - Supreme Court, U. S.

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Supreme Court of the United States

OCTOBER TERM, 1952

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No. 193

SUPREME COURT, U. S.

FORD MOTOR COMPANY,

Petitioner,

v.

GEORGE HUFFMAN, Individually, Etc.,

Respondents,

and

No. 194

**INTERNATIONAL UNION, UNITED AUTO-
MOBILE, AIRCRAFT AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA, CIO,**

Petitioner,

v.

GEORGE HUFFMAN, Individually, Etc.,

Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

**REPLY BRIEF ON BEHALF OF FORD MOTOR
COMPANY, PETITIONER**

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 193

FORD MOTOR COMPANY,

Petitioner,

v.

GEORGE HUFFMAN, Individually, Etc.,

Respondents,

and

No. 194

INTERNATIONAL UNION, UNITED AUTO-
MOBILE, AIRCRAFT AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA,
CIO,

Petitioner,

v.

GEORGE HUFFMAN, Individually, Etc.,

Respondents.

REPLY BRIEF ON BEHALF OF FORD MOTOR COMPANY, PETITIONER

Respondents Huffman *et al.* in their brief in opposition, so far as it is addressed to the Petition for Writ of Certiorari of Ford Motor Company, contend that (1) this cause is not of such "magnitude" as should persuade this Court to grant certiorari, (2) the decision of the Court of Appeals is based upon and is not in conflict with decisions of this Court and (3) other reasons cited in support of the

petition are not sufficient to justify the granting of the petition. None of these contentions is tenable.

1. Respondents do not deny petitioner's statements as to the number of different employers, unions, employees, and collective bargaining contracts which may be affected by the decision below. Those statements were based upon information supplied by the United States Bureau of Labor Statistics which is set forth in detail on pages 36-52 of the UAW-CIO Petition for Writ of Certiorari to review the decision of the Court of Appeals.* The conclusion which necessarily follows from such facts is that the general importance of the question to others who are not parties to the case (as well as to the parties) calls for review by this Court. Respondents, being unable to answer this point, assert that such facts are not contained in the record. Naturally that is so, for they bear upon the importance of the decision of the Court of Appeals for purposes of review by this Court; an issue which obviously was not before the Court of Appeals or the District Court.

In challenging petitioner's and UAW-CIO's delineation of the far reaching implications of the decision of the Court of Appeals, respondents argue that, so far, there has been no flood of litigation despite the existence of similar contract provisions for six years or more (Brief in Opp., p. 5). This merely emphasizes the general importance of the decision.

During the six-year period prior to the decision, the provisions in question were regarded as valid, presumably

*Since the filing of the petition, two errors have been discovered in this information. Neither Allis-Chalmers Manufacturing Company nor American Locomotive Company, listed on page 9 of the petition, has ever entered into a contract containing provisions such as those involved in this case.

upon the authority of cases relied upon in the Petition for Writ of Certiorari. Throughout this period, many contracts containing such provisions were entered into and administered by many employers and unions. The contrary decision of the Court of Appeals in this case, if allowed to stand, may open up the door to a vast number of claims of great magnitude. Moreover, such claims, if valid, would have increased in number and amount during the six-year period before this decision.

2. Respondents' contention (Brief in Opp., p. 6) that the decision of the Court of Appeals is not in conflict with, but is grounded upon, decisions of this Court is based upon a line of cases dealing with racial discrimination. Thus, in *Steele v. Louisville & Nashville Railroad Co.*, 323 U. S. 192 (1944), this Court held invalid provisions of a contract involving hostile discrimination based upon color alone. Such provisions were characterized as being "obviously irrelevant and invidious" (p. 203). In so holding, this Court concluded that the law imposed upon the statutory representative of a craft "at least as exacting a duty to protect equally the interests of the members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates" (p. 202). That a constitutional concept underlay the decision in the *Steele* case is further evidenced by the latest decision in the line of cases relied upon by respondents, *Brotherhood of Railroad Trainmen v. Howard*, 343 U. S. 768 (1952), where a contract provision which effectively excluded negroes from employment was held invalid even though the negroes were not represented by the union as statutory bargaining agent.

Unquestionably the seniority provisions under attack here invade no constitutional principle. Their relevance to the employee-employer-union relationship has been adequately demonstrated (Pet. pp. 15-16) and neither the Court below nor respondents have given any reason for considering them to be otherwise. They are therefore not invalid under the *Steele* case.

Far from supporting the decision of the Court of Appeals, the principle of the *Steele* case requires its reversal. The *Steele* case points out that "differences in seniority * * * are within the scope of the bargaining representation of a craft, all of whose members are not identical in their interest or merit" (p. 203).

Moreover, the Court of Appeals has failed to follow the dictates of this Court in *Aeronautical Industrial District Lodge 727 v. Campbell*, 337 U. S. 521 (1949), which in sustaining contract provisions establishing preferred seniority for a group of employees not based upon the duration of employment by the company, emphasizes the necessity for looking to the conventional uses of the seniority system in the process of collective bargaining (p. 526). As the Petition for Certiorari demonstrates, such conventional uses include contract provisions substantially identical with those involved in this case. They have been approved by the War Labor Board (Pet. p. 14), endorsed by the Department of Labor (Pet. p. 14) and included in many labor contracts (Pet. pp. 8-9).

3. The discussion in the Brief in Opposition (pp. 13-14) relating to the other reasons advanced by petitioner for granting the writ is also without merit. Respondents seem to recognize that conflicts or apparent conflicts may exist between the decision of the Court of Appeals and some deci-

sions of other courts relied upon by petitioner (pp. 13, 14), but assert that this is of no importance because the question involved was resolved by this Court in the *Steele* case, *supra*. As petitioner has shown, however, that case calls for a reversal of the decision of the Court of Appeals.

Respondents fail to distinguish the decision of the Court of Appeals in this case from the decisions of federal and state courts which are relied upon in the petition to establish a conflict. Respondents merely assert that, "for the most part", those cases involved contract provisions which set standards that applied to all members of the bargaining unit alike. But each involved a provision which created unfavorable effects upon some employees as opposed to others. Those cases also reveal the interest of other companies, unions and employees in the question involved. The predicament of the many who are so interested is outlined in the petition (pp. 9-11): it is whether to guide their actions by the decision of the Court of Appeals of the Sixth Circuit in this case, or by the decisions of the other courts. The conflict can be resolved only by a decision of this Court.

It is submitted that the decision of the Court of Appeals should be reviewed and reversed.

Respectfully submitted,

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August 29, 1952.

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Supreme Court of the United States

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FORD MOTOR COMPANY, PETITIONER,

vs.

GEORGE HUFFMAN, INDIVIDUALLY,
AND ON BEHALF OF A CLASS, ETC., ET AL.

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AND ON BEHALF OF A CLASS, ETC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR FORD MOTOR COMPANY, PETITIONER

WILLIAM T. GOSSETT,
L. HOMER SURBECK,
RICHARD W. HOGUE, JR.,
MALCOLM L. DENISE,
Counsel.

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BRIEF FOR FORD MOTOR COMPANY, PETITIONER

OPINIONS BELOW

The majority and dissenting opinions of the Court of Appeals (R. 30-38) are reported in 195 F. 2d 170. The District Court rendered no opinion, but set forth in its judgment the reasons for its decision (R. 26).

JURISDICTION

The judgment of the Court of Appeals was entered on March 3, 1952 (R. 29). On March 21 and March 23, 1952, respectively, Ford Motor Company (hereinafter referred to as the "Company") and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO (hereinafter referred to as "UAW-CIO") filed timely petitions for rehearing, which were denied on April 15, 1952 (R. 41, 53, 69). The petitions for writs of certiorari were filed on July 14, 1952. Certiorari was granted on October 13, 1952 (R. 70). Jurisdiction of the Court is invoked under the provisions of Section 1254(1) of the Judicial Code (28 U. S. C. § 1254(1)).

QUESTION PRESENTED

Whether a provision in a contract between an employer and the collective bargaining agent (under the National Labor Relations Act) for a unit of employees is invalid because it affords to employees first hired by such employer following military service in World War II seniority credit for the period of such service.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that the provisions of the agreement between UAW-CIO and the Company were invalid because they:

- (a) had no relevance to terms and conditions of work or the normal and usual subject of contracts between union and employer;
- (b) dealt with a subject with respect to which the union had no authority to negotiate;
- (c) were discriminatory despite the absence of any malice or hostility;
- (d) were made without regard for the protection of all members of the union or the union as a whole;
- (e) were based upon the period of military service of veterans not previously employed.

2. In reversing the summary judgment granted on petitioner's motion.

3. In failing (upon reversal) to remand the case for a trial on the issue of validity.

STATUTES INVOLVED

Section 8 of the Selective Training and Service Act of 1940, as amended,* provides in substance that any person who leaves the employ of a private employer or of the Federal Government in order to perform military service, and who makes application for re-employment within a specified period after he is relieved from such service, shall be restored to his former position or one of like seniority, status and pay (§ 8(b)). The section further provides (§ 8(c)):

*54 Stat. 890 (1940), as amended, 56 Stat. 724 (1942), 58 Stat. 798 (1944), 50 U. S. C. App. § 308 (1946). The full text of the pertinent provisions of this Act is set forth in Appendix A to this brief, pp. 57-58.

"Any person who is restored to a position in accordance with the provisions of paragraph (A) or (B) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority * * * and shall not be discharged from such position without cause within one year after such restoration."

Section 12 of the Veterans' Preference Act of 1944* provides:

"In any reduction in personnel in any civilian service of any Federal agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency ratings: *Provided*, That the length of time spent in active service in the armed forces of the United States of each such employee shall be credited in computing length of total service: *Provided further*, That preference employees whose efficiency ratings are 'good' or better shall be retained in preference to all other competing employees and that preference employees whose efficiency ratings are below 'good' shall be retained in preference to competing nonpreference employees who have equal or lower efficiency ratings: *And provided further*, That when any or all of the functions of any agency are transferred to, or when any agency is replaced by, some other agency, or agencies, all preference employees in the function or functions transferred or in the agency which is replaced by some other agency shall first be transferred to the replacing agency, or agencies, for employment in

*58 Stat. 390 (1944), 5 U. S. C. § 861 (1946).

positions for which they are qualified, before such agency, or agencies, shall appoint additional employees from any other source for such positions."

Section 7 of the National Labor Relations Act, as amended, upon which the decision of the Court of Appeals was based, reads as follows*:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection * * *."

Other provisions of the National Labor Relations Act which are relevant but to which the Court of Appeals did not advert in its opinion are the following**:

"Sec. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 7;

* * *

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *;

"(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

*49 Stat. 452 (1935), 29 U. S. C. § 157 (1946), as amended, 61 Stat. 140 (1947), 29 U. S. C. § 157 (Supp. 1952).

**49 Stat. 452, 453 (1935), 29 U. S. C. §§ 158, 159 (1946), as amended, 61 Stat. 140, 143 (1947), 65 Stat. 601 (1951), 29 U. S. C. §§ 158, 159 (Supp. 1952).

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce * * * employees in the exercise of the rights guaranteed in section 7 * * *;

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) * * *;

"(3) to refuse to bargain collectively with an employer, provided it is the representative of the employees * * *.

* * *

"Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *."

STATEMENT

Respondent Huffman entered the employ of Ford Motor Company, on September 23, 1943 in a unit of employees for whom UAW-CIO was, and is, the collective bargaining agent (R. 6, Para. 15; R. 3, Paras. 4-5). He was inducted into the military service of the United States on November 18, 1944 and was discharged on July 1, 1946 (R. 6, Para. 15). Within 30 days after such discharge, he was re-

employed by the Company and, in accordance with the provisions of the Selective Training and Service Act of 1940, was immediately credited with seniority for the period of his military service (R. 6, Para. 15). He is a member of the UAW-CIO (R. 3, Paras. 4-5).

On February 21, 1951, respondent Huffman, individually and on behalf of approximately 275 other persons employed by the Company at its Louisville plant, commenced this action against UAW-CIO and the Company in which he sought a declaratory judgment of the invalidity of the provisions of the collective bargaining agreements between UAW-CIO and the Company relating to seniority rights of veterans who had not been employed at the time of their entry into military service (R. 2-9).

The collective bargaining agreements were three in number (R. 12, Para. 20). The first, entered into on July 30, 1946 between Ford and UAW-CIO as statutory bargaining representative for petitioner's employees (who are required by contract to be members of the Union (R. 3, Para. 4)), contained, in Section 13, the following provisions (R. 14-15):

"(c) Any veteran of World War II who was not employed by any person or company at the time of his entry into the service of the land or naval forces or the Merchant Marine and who is a citizen of the United States and served with the allies and who has been honorably discharged from such training and service and who is hired by the company after he is relieved from training and service in the land or naval forces or after completion of service in the Merchant Marine shall, upon having been employed for six (6) months and not before, receive seniority credit for the period of such service subsequent to June 21, 1941 * * * .

"(d) It is further understood and agreed that, regardless of any of the foregoing, all veterans in the employee [sic] of the company at the time the Contract is thus amended, shall receive seniority credit for their period of service, subsequent to June 21, 1941 in the land or naval forces or Merchant Marine of the United States or its allies, upon completion of their probationary period."

Identical provisions were embodied in the second agreement, dated August 24, 1947, negotiated with the Company by UAW-CIO as bargaining representative of the Company's employees (R. 17-18, Sec. 13(c); R. 12, Para. 20). The third agreement between the Company and UAW-CIO, dated September 28, 1949, preserved to all veterans then employed by the Company the seniority credits provided in the 1946 and 1947 agreements (R. 21, Sec. 12(c); R. 12-13, Para. 20). Both the 1947 and 1949 agreements contained provision for ratification by the Union membership, and presumptively they were so ratified (Petition of Ford for Certiorari, p. 5; Res. Br. in Opp., p. 2).*

Each of the three agreements provided that veterans re-employed by the Company after a period of military service are entitled to credit toward seniority for such period of military service (R. 13-14, Sec. 13(a); R. 16-17, Sec. 13(a); R. 20, Sec. 12(a)).

The complaint alleges that Huffman and other employees at the Company's Louisville plant constitute a class whose relative positions on the Company's seniority roster have

*Complete copies of the three agreements were annexed to the answer of the Company as Exhibits A, B and C (R. 12). Only the portions of such agreements containing the provisions attacked by respondent Huffman were included in the record on appeal to the Court of Appeals (R. 13-22, 27-28).

been changed, by reason of the aforementioned contract provisions, to positions lower than those to which they would otherwise be entitled (R. 5, Para. 9). Plaintiff and the class whom he represents are alleged to have been laid off or furloughed at times and for periods when, except for such provisions, they would not have been laid off or furloughed (R. 7; Para. 16). None of the members of such class, except Huffman, is alleged to be a veteran or to be protected by the Selective Training and Service Act (*cf.* R. 7-8, Para. 18).*

On motions by all parties for summary judgment (R. 10, 22, 25) the District Court dismissed the complaint (R. 26). In its judgment the court stated that it was of the opinion that "the collective bargaining agreement expresses an honest desire for the protection of the interests of all members of the union and is not a device of hostility to veterans", and that the court "finds that said collective bargaining agreement sets up a seniority system which the Court deems not to be arbitrary, discriminatory or in any respect unlawful" (R. 26).

The Court of Appeals reversed. The majority opinion (by Allen, C. J., concurred in by Hicks, Ch. J., R. 30-38), despite the assumption that the clauses in question were adopted without malice or hostility,** sustained the contention that the provision was invalid, as discriminatory, because "veterans with longer periods of military service but shorter periods of employment with Ford are favored above

*The complaint alleges that the members of the class alleged to be injured and the employees who are benefitted by the provisions in question are of approximately the same number (R. 5, Para. 10). This allegation is not admitted in Ford's answer (R. 11, Para. 10). Of course no employee hired before June 21, 1941, and none hired in recent years, would be affected.

**The complaint contains no allegation of malice or hostility.

Huffman and his class" and "veterans not employed at the time they entered military service" were given "seniority credits for their period of armed service after June 21, 1941" (R. 32). The court held that length of military service "has no relevance to terms and conditions of work or the normal and usual subjects of contracts between union and employer" (R. 37). For this reason, the court held that the provisions were not authorized under the National Labor Relations Act, which, said the court, requires that in entering into labor contracts "the bargainers must make their agreements with a view to the rights of the entire group bound by them, and not enter into agreements which discriminate against one part for the benefit of another" (R. 36).

In effect, the court has ruled that provisions concerning "seniority in layoffs" in favor of veterans later employed (R. 32) which are based in part upon length of military service are invalid as a matter of law for the reason that such provisions are deemed not to have been made for the protection of the interests of all members of the union but to discriminate unlawfully against one group of employees for the benefit of another.

Judge McAllister dissented, on the grounds stated by the District Court, "that the collective bargaining agreement expressed an honest desire for the protection of the interests of all members of the union; that it was not a device of hostility to veterans; and that the seniority system therein provided was not arbitrary, discriminatory, or unlawful" (R. 38).

All three judges concurred in rejecting respondent's contention that the provision of the agreement violates rights of veterans previously employed by the Company

which are secured under the Selective Training and Service Act of 1940 (R. 32-33), and respondent has not sought review of this ruling.

SUMMARY OF ARGUMENT

The decision of the Court of Appeals imposes undue limitations upon the scope of collective bargaining. By its decision that a union, as collective bargaining agent, cannot enter into an agreement with an employer which provides for seniority credit for the period of military service of veterans first employed after military service, the court in effect denies to union and employer the power to bargain collectively with respect to a problem concerning terms and conditions of employment which Congress had deliberately left to them for solution.

Congress dealt with the problems relating to returning veterans piecemeal and in part: first in the Selective Training and Service Act of 1940, and later in the Veterans' Preference Act of 1944. The 1940 Act covered both Federal and private employment. It accorded credit for seniority based upon military service to veterans who had previously been employed as an incident of their right to re-employment. It did not deal with veterans not previously employed and thus left open the question whether the same treatment should be accorded them. The 1944 Act dealt with this question in respect of Federal employment. As regards preferences in layoffs in Federal employment, it accorded to all veterans alike credit in seniority for length of military service without regard to whether or not they had been previously employed by the Federal Government. Having thus accorded equality of treatment in respect of

Federal employment, Congress manifestly left to unions and employers the question whether its policy of equality in treatment should be followed in private industry. In doing so, Congress must have had in mind that the collective bargaining procedure, which it had established under the National Labor Relations Act, conferred authority to deal with the problem.

In holding that contract provisions for seniority credit for military service to veterans not previously employed had no relevance to terms and conditions of work or to the normal and usual subjects of contracts between union and employer, the Court of Appeals failed to appreciate the problem which confronted the collective bargaining agent and that such provisions are normal and usual subjects of collective bargaining. As Congress contemplated, the problem has been dealt with by collective bargaining in industry and industry has followed the lead set by Congress. The UAW-CIO in 1944 recommended negotiation for such provisions to all of its locals. Where disputes arose with employers as to such provisions and the matter was taken to the War Labor Board, the Board directed negotiation on the subject and thus indicated that it fell within the area of collective bargaining. *In re Firestone Tire & Rubber Company*, 28 War Labor Rep. 483 (1945); *In re American Can Company*, 28 War Labor Rep. 764 (1946). Provisions of like tenor have been endorsed by the United States Department of Labor and have been included in many contracts between unions and employers.

The problem with which the union was obliged to deal was the dissatisfaction of veterans not previously employed, which had a logical basis in three facts. First, those em-

ployees who obtained work during the war were accruing seniority at a time when others, being absent in military service, were deprived of the opportunity to obtain employment and establish a hiring-in date. Second, the Selective Training and Service Act of 1940, in providing for restoration to their jobs, with accrued seniority, of veterans previously employed, thereby emphasized an unfairness inherent in the predicament of the veteran not previously employed. Third, the failure of Congress to include in the Veterans' Preference Act of 1944 a provision covering the seniority status in private employment of veterans not previously employed, placed such veterans at a disadvantage in entering private, instead of Federal, employment.

Within the area of collective bargaining, the bargaining representative is clothed with powers comparable to those possessed by a legislative body whose judgment must be sustained if any state of facts could exist which would reasonably relate its exercise of judgment to accomplishment of an authorized objective. *Steele v. Louisville & Nashville R. R.*, 332 U. S. 192, 202 (1944). The provisions of the collective bargaining agreement here in question constitute conditions of employment which bear a reasonable relation to the problem required to be solved, are reasonably conducive to smoother industrial relations, and should be held to be within the power of the Union to negotiate. The interpretation placed upon the Act by the Court of Appeals fails to carry out the policy of the National Labor Relations Act, which broadly accepts the principle of collective bargaining as the appropriate procedure for the resolution generally of all problems with reference to rates of pay, hours and other conditions of employment.

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To accomplish the purpose of the Act, broad discretion must be accorded to the bargaining representative. *Steele v. Louisville & Nashville R. R.*, *supra*. 0

The constitutional concept of equal protection upon which the *Steele* case was based requires the reversal of the decision of the Court of Appeals because the contract provisions in question are relevant to the purposes of collective bargaining within the meaning of that case. There is no such discrimination here as was involved in the *Steele* case, where a labor agreement was held invalid because it discriminated against negroes solely by reason of their race. Indeed, Congress itself could not have authorized the discrimination involved in that case.

Other decisions by Federal and State courts uniformly have accorded to unions a wide discretion in settling industrial problems by the collective bargaining process despite the adverse effect of the solution on some of the employees represented by it. *Aeronautical Industrial District Lodge 727 v. Campbell*, 337 U. S. 521 (1949); *Britt v. Trailmobile Co.*, 179 F. 2d 569 (6th Cir. 1950), *cert. denied*, 340 U. S. 820 (1950); *Hartley v. Brotherhood of Ry. & S. S. Clerks*, 283 Mich. 201, 277 N. W. 885 (1938); *Elder v. New York Cent. R. R.*, 152 F. 2d 361 (6th Cir. 1945). In fact, no court heretofore has held a provision of a labor contract invalid upon considerations of the type relied upon by the Court of Appeals. The present decision, if allowed to stand, would result in widespread confusion and ~~cast~~ serious question upon the validity of many types of provisions commonly adopted in negotiated labor contracts.

ARGUMENT

I

Congress contemplated that the question whether veterans not previously employed should receive seniority credit in private employment for military service could be dealt with by collective bargaining.

Congress has twice dealt with the problem of integrating returning veterans into civilian employment: in the Selective Training and Service Act of 1940; and in the Veterans' Preference Act of 1944 (*supra*, pp. 3, 4).

In the Selective Training and Service Act of 1940, Congress undertook to legislate with respect to both private and Federal re-employment of returning veterans. By Section 8, any person who left either Federal or non-temporary private employment in order to perform military training or service was entitled under certain conditions, upon his return from service, to restoration to his former position or "to a position of like seniority, status, and pay". Once restored to that position he is required to "be considered as having been on furlough or leave of absence" during his military service and to be "restored without loss of seniority" (§§ 8(b) and 8(c), Appendix A, pp. 57-58).

But for these provisions, a returning veteran seeking re-employment would have found himself at a serious disadvantage. In the first place, during his absence, his job might have been filled by another. And, even if his former employer could find a place for him, he would have been prejudiced in his seniority status. Such prejudice would have been in direct proportion to the length of his military service. Section 8 of the 1940 Act was designed to obviate

both of his difficulties. It not only restored to him his job, but entitled him to the same seniority to which he would have been entitled if he had not been absent from his employment during the period of his military service. *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U. S. 275 (1946); *Trailmobile Co. v. Whirls*, 331 U. S. 40 (1947); *Aeronautical Industrial District Lodge 727 v. Campbell*, 337 U. S. 521 (1949). Congress thus removed an area of discrimination resulting from military service which would otherwise have existed against the veterans who had been previously employed. It avoided the development of one kind of dissatisfaction and friction which might have led to strikes.

Congress dealt in that statute only with re-employment rights of veterans previously employed and as an incident thereof the seniority status upon re-employment. It did not consider the situation of returning veterans not previously employed, and thus left open the question whether once they had secured employment they should be accorded the same status as veterans previously employed. Never having established relations with any employer, their predicament upon returning from the service often was worse than the class of veterans covered by Section 8.

The factual difference between the two classes of veterans was not so sharp as might appear on the surface. Many young men were able to obtain employment for very brief periods before entering military service, thus securing statutory rights looking towards their return. Others, through lack of opportunity or inclination, did not do so. The fact that legislative provision had been made for the previously employed was a circumstance likely to provoke friction and serious discontent which would be aggravated by a feeling, not without justification, that the very measures provided

for by Section 8 had the effect of discrimination against veterans not previously employed.

These implications were both serious and far-reaching. They embraced both Federal and private employment, and the problem for both multiplied in its intensity as increasing numbers of veterans returned from the service.

Congress dealt with the question of new Federal employees in the Veterans' Preference Act of June 27, 1944.* With respect to seniority in relation to reduction in personnel or layoffs, Section 12 of the Act made no distinction between veterans employed by the Federal Government prior to their military service and those who entered Federal employ after military service.** In either case, length of military service was credited in computing total length of service. That section provided in part:

"In any reduction in personnel in any civilian service of any Federal agency*** the length of time spent in active service in the armed forces of the United States of each such employee shall be credited in computing length of total service***."

In thus placing all veterans on a parity without regard to whether their first Federal civilian employment had been before or after military service, Congress established a policy of equality of treatment which tended to erase any distinction which may have resulted from the Selective Training and Service Act and placed both classes of veterans on a parity with those who had not been in military service.

*58 Stat. 387 (1944), 5 U. S. C. § 851 *et seq.* (1946), as amended, 61 Stat. 501 (1947), 62 Stat. 3 (1948), 62 Stat. 1233 (1948), 63 Stat. 666 (1949), 64 Stat. 1117 (1950), 5 U. S. C. § 851 *et seq.* (Supp. 1952).

**58 Stat. 390 (1944), 5 U. S. C. § 861 (1946).

In doing this, Congress high-lighted the problem for private employment. The problem related to terms and conditions of employment and therefore was within the scope of the employer's obligation to bargain under the National Labor Relations Act. Manifestly, if a collective bargaining agreement could not lawfully contain a provision giving full or partial recognition to the length of military service, the problem would be without the possibility of solution in unionized industry in the absence of a further act of Congress. And since Congress took no further action it must have intended that the problem in private industry could and should be dealt with through the collective bargaining process. To conclude otherwise is to attribute to Congress an expressed intention that veterans newly employed in private industry as a matter of law could not be accorded similar equality of treatment as were veterans newly employed by the Government.

The circumstances under which Congress left the problem of seniority of returning veterans to the collective bargaining process are significant. Although Congress dealt only with Federal employment in the Veterans' Preference Act of 1944, it did not overlook the related problems in private employment, which it contemplated would be solved without further Congressional action. The 1944 Act was in pursuance of a veterans' employment and rehabilitation program which was dependent in large part upon the cooperation of private industry, inasmuch as the Government itself obviously could not have found employment for all returning veterans. If seniority problems could not be dealt with under the collective bargaining process, the program might well have failed, at least in part, through lack

of ability of unionized private industry to cooperate.* The Congressional reports on the bill clearly show that Congress had private employment very much in mind and counted upon the cooperation of industry in supporting its program for the adjustment and rehabilitation of World War II veterans.** As the Court pointed out in *Mitchell v. Cohen*, 333 U. S. 411, 418-419 (1948):

“* * * The Federal Government, in its capacity as an employer, determined to take the lead in such a program. * * *”

In a footnote the Court made reference to the Congressional debates [90 Cong. Rec. 3501-3507 (1944)] and to the House Report, which stated [H. R. Rep. No. 1289, 78th Cong., 2d Sess., p. 3 (1944)] (333 U. S. at 419 n. 13):

“Private employers and corporations, as well as State, county, and municipal governments, have been urged through the selective-service law and otherwise to afford reemployment to veterans when they

*There would be nothing to prevent a non-unionized employer who is under no duty to bargain with a representative of his employees from retaining veterans in employment during periods of layoffs whether or not they had been in his employ before military service.

**Congress had the same general attitude toward private industry when it passed Section 8 of the Selective Training and Service Act of 1940. That Act, as above noted, dealt, as regards seniority, precisely the same with both private and Federal employment. As to the obligation to rehire, however, the provision as to the Federal Government was without qualification; whereas the private employer was not required to re-employ a veteran when the employer's circumstances had so changed as to make it impossible or unreasonable for him to do so. As pointed out in the majority opinion by Mr. Justice Black in *Hilton v. Sullivan*, 334 U. S. 323, 329 (1948); this difference had been noted by the Congressional sponsors of the Act “who thought that the Federal Government should set an example to private industry by providing jobs for all returning veteran employees”.

leave the armed forces. Your committee feels that the Federal Government should set the pace, and that this proposal is an essential part of the reemployment and rehabilitation program."

and to the Senate Report, which stated [Sen. Rep. No. 907, 78th Cong., 2d Sess., p. 1 (1944)]:

"The committee believes that in view of the fact that members of the armed forces rapidly are being returned to civilian life, the bill should be enacted without delay."

It is accordingly clear that by this Act Congress intended to set the pace for private industry in integrating returning veterans into civilian employment, and it obviously contemplated that industry, through the collective bargaining process, would be able to follow the pace.

If there had been any doubt as to the authority, under the National Labor Relations Act, of unions and employers to reach a solution of the question as to whether the length of service of veterans not previously employed should be credited where appropriate in determining their seniority, Congress would have dealt with the problem for private employment at the time that it dealt with the problem in Federal employment. Manifestly, Congress did not intend to render it legally impossible for privately employed veterans, like Federally employed veterans, to receive appropriate recognition toward seniority for their military service.

II

Provisions granting credit for seniority based upon military service to veterans not previously employed have been regarded heretofore as within the scope of the collective bargaining process.

In holding that the contract provisions granting seniority credit upon the basis of military service to veterans not previously employed had "no relevance to terms and conditions of work or the normal and usual subjects of contracts between union and employer" (R. 37), the Court of Appeals overlooked both the nature of the industrial problem involved and the fact that bargaining for its solution has been common collective bargaining practice.

The industrial problem was nationwide. It was that of absorbing the returning serviceman into employment with as little disruption as possible. Widespread dissatisfaction with his lot, arising out of the veteran's feeling that he had lost out in his competitive status in employment, would have caused the type of unrest which leads to strikes. By the Selective Training and Service Act Congress had removed this source of dissatisfaction as to such of the veterans as had been employed before they went into the service by prohibiting discrimination against them because of their military service, (*supra*, p. 15). But the 1940 Act had left unsolved the problem of the veterans who had not been previously employed. It is precisely that problem which many unions and employers proceeded to solve by the process of collective bargaining. Collective bargaining is the only available means provided by the National Labor Relations Act for the solution of such a problem, which directly in-

volves seniority as a "condition of employment" (§§ 9(a), 8(a)(5) and 8(b)(3), *supra*, pp. 5-6).

Steps in this direction were commenced shortly after Congress, by the Veterans' Preference Act, had set an example for industry by providing for seniority credit in Federal employment for *all* returning veterans upon the basis of military service. In October 1944 the International Executive Board of the UAW-CIO adopted a model provision dealing with employment rights of returning veterans (15 Lab. Rel. Ref. Man. 2535 (1946)*). The model provision preserved to veterans previously employed the rights accorded to them by the Selective Training and Service Act. It extended to veterans not previously employed seniority credit on the basis of their military service (p. 2536). The model provision was publicized and copies forwarded to all local unions with instruction to undertake negotiations with employers for incorporation of the provision into existing agreements as soon as possible (p. 2536).

These recommendations were followed. In several instances disputes with employers as to the inclusion of such provisions were presented to the War Labor Board. Some Regional Boards directed inclusion of such provisions in labor contracts. *In re The Murray Company*, 25 War Labor Rep. 217, 221, 222 (Regional Board VIII (Dallas) 1945); *In re Firestone Tire & Rubber Company*, 24 War Labor Rep. 322 (Regional Board IV (Atlanta) 1945); *In re American Can Company*, 27 War Labor Rep. 634 (Regional Board V (Cleveland) 1945).** Although the

*All references in this brief to "Lab. Rel. Ref. Man." refer to the Manual of the Labor Relations Reporter.

**Regional Board II reached a similar result in *In re J. H. Williams Co.*, 27 War Labor Rep. 239 (New York 1945), but an editorial footnote indicates that it subsequently vacated the contract provision.

National Board reviewed the latter two cases and directed that the provisions in question be vacated; in each case the Board referred the issue back to the parties for negotiation. *In re Firestone Tire & Rubber Company*, 28 War Labor Rep. 483 (1945); *In re American Can Company*, 28 War Labor Rep. 764 (1946). At the time of these decisions such provisions were relatively new, and since the Board's power was limited to requiring terms and conditions "customarily included in collective-bargaining agreements" (57 Stat. 163, 166 (1943)), the Board apparently concluded that it was not appropriate at the time to compel their inclusion. • See *In re Buckeye Traction Ditcher Company*, 20 War Labor Rep. 247, 249 (Regional Board V (Cleveland) 1944). But, by remitting the provision to the parties for further negotiation, the Board recognized that the matter was a proper subject for collective bargaining. In no case did the Board suggest that such a provision would be beyond the scope of collective bargaining.

The Court has had occasion to refer to decisions of the War Labor Board as indicating that particular provisions of labor agreements fall within the area of collective bargaining. *Aeronautical Industrial District Lodge 727 v. Campbell*, 337 U. S. 521, 528-529 n. 5 (1949); *National Labor Relations Board v. American Ins. Co.*, 343 U. S. 395, 405-406 (1952). Thus, in the latter case the Court referred to the fact that the Board had directed the inclusion of a particular type of management function provision in some contracts, but not in others, and said (pp. 406-407):

"* * * Without intimating any opinion as to the form of management functions clause proposed by respondent in this case or the desirability of including any such clause in a labor agreement, it is mani-

fest that bargaining for management functions clauses is common collective bargaining practice."

In 1946, subsequent to the above decisions of the War Labor Board, the United States Department of Labor recommended the inclusion in labor agreements of provision for new employees who were veterans (R. 58-59; "Reemployment of Veterans Under Collective Bargaining," U. S. Department of Labor, Bureau of Labor Statistics (October 1947) pp. 46-48). The Retraining and Reemployment Administration of the Department of Labor, after consultation with representatives of labor, management and veterans' organizations, in an effort to assist in the process of reintegration, to minimize the competitive disadvantage inherent in long-term absence from civilian employment and to help veterans obtain and hold suitable jobs, published a statement of principles, which was endorsed by Secretary of Labor Schwollenbach, for the guidance of government, management and labor.* Among the principles enunciated was the following:

"13. *Newly hired veterans who have served a probationary period and qualified for employment should be allowed seniority credit, at least for purposes of job retention, equal to time spent in the armed services plus time spent in recuperation from service-connected injuries or disabilities either through hospitalization or vocational training.*" (Italics supplied.)

*Those consulted included representatives of the following organizations: American Federation of Labor, Congress of Industrial Organizations, Railway Labor Executives' Association, Business Advisory Council to the Secretary of Commerce, National Association of Manufacturers, U. S. Chamber of Commerce, American Legion, Disabled American Veterans and Veterans of Foreign Wars.

Similar provisions have been included^Q in 300 different collective bargaining contracts between UAW-CIO and other employers (R. 59-60), as well as in many other collective bargaining contracts entered into by other unions (Petition of Ford for Certiorari, pp. 8-9; Petition of UAW-CIO for Certiorari, App. C, pp. 36-51). The employers which are or have been parties to such contracts include many well-known companies: Chrysler Corporation, Hudson Motor Car Company, Kaiser-Frazer Corporation, Bendix Aviation Corporation, Electric Auto-Lite Company, Minneapolis-Moline Power Implement Company, Houdaille-Hershey Corporation, Bohn Aluminum and Brass Corp., Bell Aircraft Corp., North American Aviation, Inc., American Thread Co., Cluett, Peabody & Co., Inc., Forstmann Woolen Co., Nashua Manufacturing Co., Sargent & Co., Emerson Electric Mfg. Co., Landers, Frary & Clark, Fall River Textile Manufacturers Ass'n and New Bedford Cotton Manufacturers Ass'n (Appendix C to the UAW-CIO Petition for Certiorari, pp. 37-44). See also "Veterans' Rights Under Union Agreements", U. S. Department of Labor, Bureau of Labor Statistics (October, 1946), summarized in 19 Lab. Rel. Ref. Man. 29 (1947); Bulletin No. 908-6, U. S. Department of Labor, Bureau of Labor Statistics (1948) p. 43 *et seq.*; "Reemployment of Veterans Under Collective Bargaining," U. S. Department of Labor, Bureau of Labor Statistics (October 1947) p. 3 *et seq.**

It is thus apparent that even before the cessation of actual fighting, the collective bargaining process had been

*The cited authorities also show that many unions and employers have granted veterans special seniority credit, because of military service, in other situations not covered by the Selective Training and Service Act, for instance, in the cases of temporary employees and of disabled employees. See also B. N. A., Collective Bargaining Contracts (1941) p. 369 *et seq.*

invoked for the removal of discrimination in tenure of employment against veterans not employed before their military service; that where seniority systems had been adopted, this was sought to be accomplished by giving such veterans credit toward seniority based upon military service; and that negotiations for the inclusion of such provisions had become a common practice in collective bargaining. Therefore, such provisions (to use the language of the Court in *Aeronautical Industrial District Lodge 727 v. Campbell*, 337 U. S. 521, 528, n. 5 (1949)) are "not at all uncommon" and have been regarded as "within the area of collective bargaining".

III

The provisions are relevant to the authorized objectives of collective bargaining under the National Labor Relations Act.

The plaintiff challenges the authority of the Union, as the collective bargaining agent, to enter into such an agreement on behalf of all members of the Union. The Court of Appeals sustained his contention, despite its assumption that both the Union and Ford, in executing the bargaining contract, "had a well-meaning desire to protect veterans who had had no chance for employment prior to their service in the armed forces" (R. 36). But, the Court of Appeals said (R. 36), "in so doing they clearly discriminated against other veterans who had entered the military service when already employed by Ford. We think such a contract is not authorized under the National Labor Relations Act." The reasoning appears to be that a measure designed to help certain veterans is necessarily discrimina-

tory against others—even though those others enjoy the benefit of at least as favorable treatment—and therefore not within the authority of collective bargaining agents which, according to Judge Allen, “must make their agreements with a view to the rights of the entire group bound by them, and not enter into agreements which discriminate against one part for the benefit of another” (R. 36).^{*} But Judge Allen’s reasoning overlooks a major objective of the National Labor Relations Act.

The clear purpose of that Act was to avoid industrial unrest which leads to strikes and consequent interruption of interstate commerce. The recital of congressional policy which appears in the original Wagner Act includes the statement (49 Stat. 449 (1935), 29 U. S. C. § 151 (1946)):

“The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce * * *”

And this policy was reaffirmed by Congress by the declaration in the Taft-Hartley Act, which states (61 Stat. 136 (1947), 29 U. S. C. § 141 (Supp. 1952)):

“Industrial strife which interferes with the normal flow of commerce * * * can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one

^{*}We must confess complete inability to understand how the court could conclude that there was any discrimination “against” reinstated veterans as a class. Assuming equal military service, the same amount of seniority credit was given for it to each class. The advantage, if any, was in favor of the reinstated veterans who alone could get credit for military service prior to June 21, 1941.

another's legitimate rights in their relations with each other * * *"

The Court has frequently referred to the policy, of which the Act is an expression, of avoiding industrial unrest and strikes by utilization of the collective bargaining process. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45 (1937); *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 221-222 (1938); *Terminal R. R. Ass'n v. Brotherhood of R. R. Trainmen*, 318 U. S. 1, 6 (1943); *National Labor Relations Board v. American Ins. Co.*, 343 U. S. 395, 401-402 (1952). Cf. *Steele v. Louisville & Nashville R. R.*, 323 U. S. 192, 199-200 (1944). Indeed, the provisions of the Act were held constitutional by virtue of recognition by the Court that prior to the Act industrial unrest and strikes had been avoided by means of collective bargaining. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, *supra* at 42; cf. *Virginian Ry. v. System Federation No. 40*, 300 U. S. 515, 534 (1937). Industrial unrest and strikes are the results of collective dissatisfaction of individual workers. Congress adopted collective bargaining as a means of removing such dissatisfaction on the part of employees by granting them the right to conduct collective bargaining negotiations through a representative chosen by majority vote (§§ 7 and 9(a), *supra*, pp. 5-6). It made that representative the exclusive representative and imposed upon the employer and that representative alike the mutual obligation to treat with each other in respect of wages, hours of employment or other conditions of employment (§§ 8(a) (5), 8(b)(3) and 9(a), *supra*, pp. 5-6). Obviously Congress thus gave implicit recognition to the use of collective bargaining as a means of solving any problem relat-

ing to terms and conditions of employment which might give rise to industrial unrest. The Court has specifically pointed this out in dealing with similar provisions of the Railway Labor Act, the purpose of which does not differ from that of the National Labor Relations Act. In *Steele v. Louisville & Nashville R. R.*, *supra*, 323 U. S. at 199-200, the Court said that the aim of that Act was sought to be achieved by encouraging "the prompt and orderly settlement of *all disputes* concerning rates of pay, rules and working conditions" (Italics supplied).

Seniority and layoff systems are terms or conditions of employment. As such they have been held to be within the area of collective bargaining. In *Aeronautical Industrial District Lodge 727 v. Campbell*, 337 U. S. 521 (1949) the Court recognized that seniority was "a part of the process of collective bargaining" (p. 526); and in *Steele v. Louisville & Nashville R. R.*, *supra*, 323 U. S. at 203, the Court regarded "differences in seniority" as "within the scope of the bargaining representation of a craft, all of whose members are not identical in their interest or merit".

The Union, in negotiating the labor contract for the benefit of its members as a whole, was bargaining for a seniority system. If the system were based solely upon the principle of length of employment, it was inevitable that certain of the employees whom it represented would be dissatisfied.* Thus, the veterans employed before a period of military service would have been dissatisfied if the Federal statute had not accorded them seniority credit for military

*The Union was under no legal duty to negotiate for a system of layoff based solely or primarily on length of employment. Such systems are not a usual feature of collective bargaining agreements in a number of industries, for example, the building and maritime industries. Cf. *The Aeronautical Lodge case*, *supra*, 337 U. S. at 527.

service. And failure to accord similar treatment to veterans first employed after military service inevitably would have resulted in dissatisfaction on the part of that class of veterans. In the case of Federal employment, Congress had avoided such dissatisfaction by according like treatment with respect to seniority credit for military service to all veterans in Federal civilian employment (*supra*, p. 17). And Congress had contemplated that, where appropriate, private industry would follow its lead (*supra*, pp. 18-20). The Secretary of Labor had also recommended the same solution to private industry (*supra*, p. 24). In view of such precedents, if the Union had not adopted this policy of equality of treatment, the veteran who had not been employed before military service would thus have had more than adequate justification in feeling dissatisfied with his lot. His only remedy would have been to attempt to force the adoption of such a provision through action which might have led to a strike. This is the very thing the Act was intended to avoid.

It cannot be assumed, as the Court of Appeals appears to have done (R. 38), that the Union failed to consider the rights of veterans employed prior to military service. The rights of such veterans must have been considered for their very existence not only aggravated the problem with respect to the other class of veterans (*supra*, p. 16) but created an obvious discrimination which might have been made the basis for the mobilization of public opinion against the Union (as well as the employer) by veterans not previously employed, on the charge that labor contracts had frozen them out of employment opportunities in favor of those who had come into the plants to enjoy the prosperity of war work while they were fighting for their country.

The Union was compelled to decide whether to run the risk of resultant labor unrest and a possible strike or to accord equal treatment to all veterans and to place all of them on a parity with nonveterans. Surely its decision to take the latter course cannot be deemed to be arbitrary. Its decision was in the interests of all employees represented by it because, among other things, it avoided the possibility of a strike and of adverse public opinion which might have served to weaken the Union. And certainly it is neither wise nor correct to assert that unions are under a legal duty to approach bargaining problems on the most narrowly selfish basis possible, without regard either to the interests of society as a whole or to their own standing in society. The decision of the Court of Appeals in effect asserts such a duty.

That the provisions for seniority credit in the present case are not arbitrary is clearly indicated by the decision in *Aeronautical Industrial District Lodge 727 v. Campbell*, 337 U. S. 521 (1949). There the Court stated that contract provisions giving special seniority to union chairmen benefitted all members of the unit represented "by promoting greater protection of their rights and smoother operation of labor-management relations" (p. 529). It concluded that the provisions "surely ought not to be deemed arbitrary or discriminatory" (p. 528) and added (n. 5) that, "while there is not complete agreement on the advantage of" such provisions, "it is certainly within the area of collective bargaining."

Until its decision in this case, the Court of Appeals, on the authority of the *Aeronautical Lodge* case, had recognized that provisions as to seniority dictated by objectives similar to those present here were within the authority of a collective bargaining agent. *Britt v. Trailmobile Co.*, 179 F. 2d

569, 573 (6th Cir. 1950), *cert. denied*, 340 U. S. 820 (1950). There the agreement defined the seniority rights of two classes of employees. One class originally had been employed by a subsidiary which merged with Trailmobile; the other had been employed by Trailmobile itself prior to the merger. For a time after the merger both groups were afforded seniority rights by the union agreement upon the basis of their hiring date by either the subsidiary or by Trailmobile. The Trailmobile employees, constituting a majority, organized a new union which negotiated a new contract with the company. That contract continued to establish the seniority of those employed by Trailmobile prior to the merger upon the basis of their original date of employment by that company; but the seniority of those formerly in the employ of the subsidiary was based upon their employment from the date of the merger only. The result was an obvious preference by the union of old Trailmobile employees as against the other employees. In its opinion sustaining this differentiation, the Court of Appeals specifically pointed out that the *Aeronautical Lodge* case, *supra*, "tells us * * * that it would be an undue restriction on the process of collective bargaining to forbid changes in collective bargaining arrangements whereby veterans, as well as nonveterans, are benefited by promoting greater protection of their rights and smoother operation of labor-management relations" (p. 572). The court went on:

"* * * Collective bargaining is a continuous process and a veteran becomes the beneficiary of those gains, the achievement of which is the constant thrust of collective bargaining. Collective bargaining agreements are made by a bargaining agent selected by a majority of the working force and are

binding upon all employees. One who benefits as the result of such collective agreements must * * * accept not only its advantages but its limitations."

And the court concluded (p. 573):

"* * * Whatever we might think of the fairness of the differentiation, the discrimination was in pursuance of the bargaining process and not without some basis, forestalled a strike and was therefore not invalid. *Aeronautical Industrial District Lodge 727 v. Campbell, supra.*"

The reasoning of the court in that case is equally applicable to this. This is indicated by the decisions in the only two other cases in which provisions of like content have been attacked.

The identical contract provisions involved in this case were sustained in an unreported decision by the District Court for the Western District of North Carolina in *Price, et al. v. Ford Motor Company and UAW-GIO*, Civil Action No. 564 (1948).^{*} There, several Ford employees who were not veterans sought to enjoin the carrying out of the provisions of the agreement of August 21, 1947, which are attacked in this case. The plaintiffs' seniority was alleged to have been reduced "without regard to whether said new employees are better fitted to do and perform the work" (Para. 11, Appendix B, p. 62). Such action was alleged to be "discriminatory" and to infringe "due process of law" and "the equal protection of the laws" (Para. 12, Appendix B, p. 62). The order of the court, on motions by the

^{*}A certified copy of the proceedings in this case has been lodged with the Clerk of this Court. The amended complaint and the order of the court dismissing it have been printed as Appendices B and C to this brief.

Union and the Company for a summary judgment, states that the agreement between the Company and the Union "and every part thereof, is valid and binding upon said Union and upon the plaintiffs" and, accordingly the action was dismissed (Appendix C, p. 65).

In *Haynes v. United Chemical Workers, CIO*, 190 Tenn. 165, 228 S. W. 2d 101 (1950), provisions in a contract between the union and employer granted to all veterans of World Wars I and II seniority credit equal to 25 per cent of the time spent in the armed services during such wars, whether or not they had previously been employed by the company. Other employees sought an adjudication that such provisions were invalid as impairing the seniority rights of nonveterans as well as those of veterans who had been employed by the Company before entering military service. These employees argued that the *Steele* case, *supra*, required that the court hold such provisions invalid. The validity of the contract, however, was upheld as not violative of any State or Federal policy.

Though the Court of Appeals in the instant case cited *Steele v. Louisville & Nashville R. R.*, 323 U. S. 192 (1944), to support its decision that the contract provisions were invalid, it is apparent that the *Steele* case requires that the contract provisions be sustained.

The Court in that case was dealing with discrimination against negro brakemen by virtue of their race alone, a situation obviously distinguishable from the facts of this case. The decision was based upon a constitutional concept. The Court pointed out that the authority of the union to negotiate for the negro brakemen was based solely upon the Railway Labor Act, since the brakemen

were not members of the union and therefore had not consented to be represented by it. It concluded that the Act imposed upon the bargaining representative "the duty to exercise fairly the power conferred upon it in behalf of all those for whom it acts, without hostile discrimination against them" (pp. 202-203); and this duty was held to be breached by "discrimination" based upon race alone which the Court characterized as "obviously irrelevant and invidious" (p. 203).

The fact that the Court felt impelled to outlaw the racial discrimination by virtue of constitutional principles is further shown by the subsequent decision of the Court in *Brotherhood of R. R. Trainmen v. Howard*, 343 U. S. 768 (1952), where the Court held that a bargaining representative chosen under the Railway Labor Act could not discriminate in terms and conditions of employment against negro employees who were not even members of the craft or unit represented by the union and toward whom the union had no statutory duty of representation. The decision was based upon the *Steele* case and upon *Shelley v. Kraemer*, 334 U. S. 1 (1948); in which the Court refused to enforce restrictive covenants in private agreements discriminating against negroes because of their race.

In analyzing the grant of power to the bargaining agent under the Railway Labor Act, the Court in the *Steele* case said that (p. 198) "the representative is clothed with power not unlike that of a legislature", which "is subject to constitutional limitations on its power to deny, restrict, destroy or discriminate against the rights of those for whom it legislates and it is also under an affirmative constitutional duty equally to protect those rights". Accordingly, "discriminations based upon race or color, which would be in-

valid if contained in legislation, would be likewise unauthorized if contained in a collective bargaining agreement. The Act imposed upon the statutory representative of a craft (p. 202) "at least as exacting a duty to protect equally the interests of the members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates" and "Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents, cf. *J. I. Case Co. v. Labor Board*, *supra* [321 U. S.] 335, but it has also imposed on the representative a corresponding duty". And the Court did not end the analogy with reference to the limitations upon legislative powers. Instead, it developed the affirmative aspects of legislative powers. It said (323 U. S. at 203):

"This does not mean that the statutory representative of a craft is barred from making contracts which may have unfavorable effects on some of the members of the craft represented. Variations in the terms of the contract based on differences relevant to the authorized purposes of the contract in conditions to which they are to be applied * * * are within the scope of the bargaining representation of a craft, all of whose members are not identical in their interest or merit. * * *"

In support of the foregoing conclusion, the Court cited three of its decisions which are illustrative of application of the principles which sustain the power of a state legislature to make differentiations among persons or classes whom it represents for the purpose of accomplishing an objective believed to be in the best interests of the public whom it

represents: *Carmichael v. Southern Coal & Coke Co.*, 301 U. S. 495, 509 (1937); *Washington ex rel. Bond & Goodwin & Tucker v. Superior Court*, 289 U. S. 361, 366 (1933); and *Metropolitan Casualty Ins. Co. v. Brownell*, 294 U. S. 580, 583 (1935).

Thus, in the *Carmichael* case, the Court said (p. 509) "inequalities which result from a singling out of one particular class for taxation or exemption, infringe no constitutional limitation", and a "legislature is not bound to tax every member of a class or none"; and (p. 518) the "end being legitimate, the means is for the legislature to choose"; when "public evils ensue from individual misfortunes or needs, the legislature may strike at the evil at its source".

And the following language in the *Metropolitan Casualty* case (p. 583) was cited by the Court in the *Steele* case:

"The equal protection clause does not prohibit legislative classification and the imposition of statutory restraints on one class which are not imposed on another. * * * The ultimate test of validity is not whether foreign corporations differ from domestic, but whether the differences between them are pertinent to the subject with respect to which the classification is made. If those differences have any rational relationship to the legislative command, the discrimination is not forbidden." (Citations omitted.)

It is thus apparent that in construing the provisions of the Railway Labor Act, which grant to the statutory representative the power to conduct negotiations on behalf of all employees in a craft or unit, the test to be applied, at most, is whether the provisions of the labor agreement based upon the different interests of the employees who are affected,

continuance of his system, but concedes benefits to the employees in other respects so that a bargain is reached which the union feels, on the whole, is advantageous to the employees. Under the reasoning of the Court of Appeals, the union would have no authority to make this kind of an agreement; its authority would be limited to an agreement which required the employer to adopt only a system related to skill on the job or length of service with the company, regardless of what out-weighing benefits might accrue to the employees in return for consenting to some other method. Its choice presumably would be limited either to working without a contract or striking until it could get the kind of provision a court would approve even though all of the employees affected might prefer to do otherwise. Yet, clearly such bargaining would not merely be "relevant" to, it would embody, terms and conditions of employment. In arriving at its conclusion, the court seems to have ignored completely the fundamental fact that a union cannot set conditions of employment unilaterally, but must procure agreement on them by the employer.

This Court in the case of *National Labor Relations Board v. American Ins. Co.*, 343 U. S. 395, 402 (1952), reiterated the principle that the Act does not "regulate the substantive terms governing wages, hours and working conditions which are incorporated in an agreement". Reviewing the changes made by the Taft-Hartley Act, the Court concluded "And it is equally clear that the Board may not, either directly or indirectly, compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements" (p. 404). Certainly the courts have no greater authority in this respect than the National Labor Relations Board which is charged with the duty of administering the Act.

The possibility that various contract provisions may be deemed invalid upon the basis of the decision of the Court of Appeals in this case and of resulting litigation by dissident employees involves potential risks to which employers will not lightly expose themselves. If the scope of the bargaining representative's authority is circumscribed by the narrow legal confines adopted by the Court of Appeals, negotiations are apt to degenerate into legal debates over the union's power and authority to make the agreements it proposes.

The courts heretofore have accorded to unions broad discretion in solving the many problems which necessarily arise in the field of collective bargaining. They have upheld any reasonable solution reached by collective bargaining even though it required adjustment of the relative rights of classes of employees. This is clearly shown by the decisions in the *Aeronautical Lodge* case and in the *Britt* case, discussed *supra*, pp. 31-33, as well as by other decisions which have dealt with the power of a collective bargaining representative.

Thus, in *Foster v. General Motors Corp.*, 191 F. 2d 907 (7th Cir. 1951), *cert. denied*, 343 U. S. 906 (1952), the validity of contract provisions governing vacation pay was attacked as discriminating against veterans in violation of the Selective Training and Service Act. The contract provided that vacation pay for 1946 would be governed by the gross earnings of employees in 1945. Plaintiffs, who had been in military service during 1945 and thus had received no pay in that year, were not entitled to vacation pay in 1946. The validity of the contract was sustained notwithstanding the fact that the result appeared to be dis-

*The possible extent of litigation as a result of the decision in this case has been adverted to in Ford's Petition for Certiorari (p. 9).

crimminatory against the plaintiffs. The court necessarily recognized that the contract provision fell within the scope of collective bargaining. It held that there had been no bad faith in the bargaining and said (at p. 911):

"* * * After all, a union as an authorized bargaining agent no doubt is legitimately interested in obtaining the best possible contract for its members as a whole, and with numerous diversified interests among its members, especially, where its membership is large, there is nothing strange or unnatural if some segments of its membership are placed at disadvantage when compared with others.
* * *

In *Hartley v. Brotherhood of Ry. & S. S. Clerks*, 283 Mich. 201, 277 N. W. 885 (1938), the court sustained a provision requiring the dismissal of married women without regard to the seniority which they had accumulated previously. The provision had been adopted by the union and employer as a result of a growing body of sentiment, caused by the depression, that it was unfair to retain married women in employment solely because they had been employed before other persons, whose need for work was greater than that of married women. The court found that the purpose of the union was to protect the general welfare of its members, and the adverse effect of the change on particular individuals was held not to prevent a change in seniority rights which would meet the problem presented. The court stated (283 Mich. at 206-207; 277 N. W. at 887):

"* * * This agreement was executed for the benefit of all the members of the brotherhood and not for the individual benefit of plaintiff. When, by reason of changed economic circumstances, it became ap-

parent that the earlier agreement should be modified in the general interest of all members of the brotherhood it was within the power of the latter to do so, notwithstanding the result thereof to plaintiff. The brotherhood had the power by agreement with the railway to create the seniority rights of plaintiff, and it likewise by the same method had the power to modify or destroy these rights in the interest of all the members.

"A different situation might be presented had the agreement of 1932 been accomplished as a result of bad faith, arbitrary action, or fraud directed at plaintiff on the part of those responsible for its execution. No claim or showing of such a nature is made in this case. * * *"

See also *Schlenk v. Lehigh Valley R. R.*, 74 F. Supp. 569, 571 (D. N. J. 1947).

This decision was followed by the Court of Appeals for the Sixth Circuit in *Elder v. New York Cent. R. R.*, 152 F. 2d 361 (1945) where, upon the consolidation of various offices in a railway system which had the effect of reducing available jobs, the union and the employer agreed that, despite the existence of a seniority system, employees on furlough at the time of the consolidation should be dropped completely from the company rolls. The result was that in the future, the employer was not required to rehire in order of seniority. No hostility or bad faith was alleged. The court, relying upon the above-quoted language from the decision in the *Hartley* case and distinguishing the *Steele* case, sustained this amendment to the agreement. The court said (at 364):

"* * * appellant rests upon no right created by statute * * *. His individual seniority rights were both created and limited by the bargain which was

have a rational relationship to an authorized objective. We submit that no more stringent test is required by the National Labor Relations Act,* and that, as we have shown, a rational relationship exists between the contract provision involved in this case and the purposes of collective bargaining.

IV

The provisions are not discriminatory or unfair.

The Court of Appeals stated that under the National Labor Relations Act the bargaining representative must "exercise fairly the power conferred upon it in behalf of all those for whom it acts without discrimination" (R. 36). It stated that the question presented in this case was "whether the union and management can by contract create preferential seniority in men not employed when they entered the armed services as against men, also veterans, who were employed when they entered the armed services" (R. 34).

The fairness of the Union's action in the present case, and the absence of discrimination as between veterans, is demonstrated readily by consideration of Huffman's individual position. As a veteran, Huffman relies in his complaint (Para. 15, R. 6-7) upon Section 8 of the Selective Training and Service Act, which entitles him to a seniority status computed upon the basis of the length of his employ-

*See Note, 65 Harv. L. Rev. 490, 495-497, 499 (1952). In applying the test of the *Steele* case to the *Britt* case, *supra*, p. 31, the Note states (p. 499) that "Although the solution was not the most reasonable * * * the result was at least rational. No more than this is required of economic legislation under the Equal Protection Clause".

ment by the Company, plus the length of his military service. As a result, in case of layoff, he may be preferred over others having a longer period of employment with Ford, but having a shorter period of, or no, military service. Despite this, he objects to the contract provisions which, on the same basis, give seniority credit to other veterans. As aptly stated by Judge Allen below (R. 32):

“* * * He contends that veterans with longer periods of military service but shorter periods of employment with Ford are favored above Huffman and his class. * * *”

Under both the Selective Service Act, upon which Huffman relies, and the contract provision to which he objects, longevity of service for purposes of seniority is reckoned on the basis of service with the Company plus military service. The difference is this. Under the Act, employment with the Company must precede the military service; under the contract provision it need not. But the total time reckoned for seniority purposes for employees with equal periods of military service and employment with the Company is obviously the same whether the latter period is before or after military service. Under neither is employment with the Company given more weight than military service. And there is no requirement under either that the length of employment with the Company shall be long enough to gain a special competence in the job. The only difference is in computing the probationary period. In that respect, the previously employed veteran is given full seniority credit for military service at once; whereas veterans not previously employed must complete their probationary period before receiving seniority credit for military service, or otherwise.

Nevertheless, in his complaint (Para. 19, R. 8) Huffman charges that the contract provisions are based upon "differences" which are "not relevant to the actual conditions of work and of employment" and therefore are in the same arbitrary category as "differences relative to differing race, color or creed, or between World War I veterans and World War II veterans, or between blue-eyed workers and brown-eyed workers".

There is a curious inconsistency, and obvious lack of equity, in Huffman's position here: He accepts, without qualm, the seniority credit under the Selective Service Act for his own military service, but at the same time objects to the contract provision because it gives credit for military service to others. If there were merit in his charge of the "discrimination" against him under the contract provision, Huffman should logically have refused to accept a like "discrimination" in his favor under the Selective Service Act. Instead, he holds to that which is in his favor and claims that the contract provision (as stated—inexplicably—by Judge Allen, R. 38) "penalizes Huffman for working for Ford before his military service".

As a matter of fact, if Huffman had worked for the Federal Government (instead of Ford) before entering military service and had returned to that employment, he would have been in exactly the same situation. Under the Veterans' Preference Act (*supra*, p. 4) no distinction is made in layoffs from Federal employment between a veteran whose military service preceded employment and one whose employment preceded his military service. In each case, length of total service is computed on the basis of the length of time spent in military service plus the length of time in the employ of the Government. So veterans

with longer periods of military service might have had preference over Huffman. In this respect he receives the same treatment under the contract provision here as he would have received under the Federal statute if he had been a Federal employee.

The Court of Appeals, however, remarked that "the question presented is not whether a legislature could have imposed this change in seniority provisions through the medium of statute" (R. 34). But the difference, if any, between the legislative powers of Congress and the bargaining authority of the union does not prevent comparison of the contract provision with the analogous clause found in the Veterans' Preference Act. It is true that Congress is constrained only by the Fifth Amendment, which contains no equal protection clause. But the fact that Congress may have had plenary powers at its disposal (*Cf. Hirabayashi v. United States*, 320 U. S. 81, 100 (1943)) does not mean that the Veterans' Preference Act, in according equal seniority rights to veterans whether or not employed prior to military service, was for that reason arbitrary or that it necessarily effected "discriminations" between different groups of veterans. On the contrary, the whole purpose of Congress was to deal equitably and fairly with all returning veterans. The Court said in *Mitchell v. Cohen*, 333 U. S. 411, 418 (1948):

"The Veterans' Preference Act was enacted in 1944 to aid in the readjustment and rehabilitation of World War II veterans. It was felt that the problems of these returning veterans were particularly acute and merited special consideration. Their normal employment and mode of life had been seriously disrupted by their service in the armed

forces and it was thought that they could not be expected to resume their regular activities without re-employment and rehabilitation aids. * * *

There would be no reason at all for Congress to discriminate unfairly against veterans previously employed in favor of those employed for the first time after completion of their military service. It is submitted therefore that the Veterans' Preference Act of 1944 may be taken as indicating that Congress did not consider that it was making any arbitrary or unfair discrimination as between these classes of veterans, but that the legislative branch of the Government regarded the treatment of all veterans on the same basis, without distinguishing between employment before and after military service, as a fair and equitable basis for layoffs in civilian employment by Federal agencies.

The Union here did not follow blindly the provisions of the Veterans' Preference Act (*supra*, p. 4), which were suited to Government civilian employment and to some extent gave an absolute preference to veterans in respect of layoff, without regard to the length of employment of non-veterans. *Hilton v. Sullivan*, 334 U. S. 323, 335-336 (1948). The Union molded the provisions with respect to seniority to fit the problem presented in private industry.

As in the Act, all veterans are treated upon the same basis and, accordingly, it is submitted that they are treated fairly and equitably. Nonveterans are not subjected to the absolute preference granted to veterans by the Act and, it is submitted, the provisions, as to nonveterans, are no less fair and equitable. The provisions adopted by the contracts gave to veterans not previously employed credit only for military service occurring after June 21, 1941. The

seniority rights of veterans and nonveterans employed prior to that date are not affected in any respect. The provisions only affect the persons who entered the employ of the company after that date. But it was the employment of such persons subsequent to that date and their resultant accrual of seniority credit which gave rise to the problem involved. By June 21, 1941 the impetus to military service had commenced.* Thereafter, in increasingly large numbers, those persons newly employed by private industry were comprised of marginal labor who normally would not have secured such employment had it not been for the fact that the war was draining the manpower of the country.** Generally speaking, it was employees of this type, who otherwise would have profited by absence of others in military service, and whose rights so acquired were adversely affected by affording seniority credit for military service to those employees who were prevented by war from continuing in or entering into employment. It was no more unreasonable for the Union to assume that veterans first employed after military service might have entered the ranks of the Company's employees earlier but for the war than for Congress, in the Selective Training and Service Act, to assume that an employee would have continued in the Company's employ but for the war.

*The President's proclamation of May 28, 1941 (6 Fed. Reg. 2617) recognized the danger to this country inherent in the war in Europe, and drafting for military service had commenced.

**There also may well have been a class of persons who secured factory jobs in the hope of draft deferment. In addition, there undoubtedly were large numbers of prospective draftees who secured employment briefly in order to take advantage, following their discharge from military service, of the re-employment provisions of the Selective Service Act.

The statutory bargaining representative must be accorded a broad discretion in order to accomplish the objectives of the National Labor Relations Act.

The decision of the Court of Appeals in this case, if allowed to stand, would result in widespread confusion and impose unnecessary restraints in connection with the normal process of collective bargaining. It casts serious question upon the validity of many types of provisions commonly adopted in negotiated labor contracts. For example, it is frequent practice to perpetuate the distinction made in a company's first labor agreement between present and new employees for purposes of seniority. Commonly, the employees at the date of adoption of the initial agreement are granted seniority from their original hiring dates, without regard to transfers from unit to unit, while individuals thereafter employed are granted seniority only from the dates of their entry into particular units. Also, provisions ordinarily are made for the future specifying the types of interruption in employment which will break seniority; but these are not applied retroactively. Such differentiations may be based on inadequacy of records, considerations of fairness or other factors deemed relevant by the parties. The validity of such provisions may well be questioned in the light of the decision of the Court of Appeals.

The everyday matter of leaves of absence is an inseparable part of a seniority system. Determination of the factors which will stop the accrual of seniority is at least as important as determination of those which begin it. An employee who is absent for any length of time without leave

generally loses his seniority. When leaves of absence are granted, seniority generally is not lost, but may or may not continue to accrue. Many contracts provide for accrual of seniority during certain leaves of absence for varying periods of time. Thus, veterans may be afforded leave to take advantage of the educational program provided for in the G. I. Bill of Rights (R. 16, Sec. 13(f); R. 19, Sec. 13(f); R. 21-22, Sec. 12(e)), whereas nonveterans do not have that right. It might be argued that such differences in treatment result in unlawful discrimination because others are not permitted leaves of absence for educational purposes. It might be argued also that it would be unlawful to permit longer periods of absence without loss of seniority to employees who are unable to work because of illness (not job incurred) than are permitted to other employees for purely personal reasons. It might be argued that a provision for leaves of absence to enable employees to take National Guard training amounts to unlawful discrimination. If distinctions cannot be made unless directly related to employment dates and to the requirements of the work performed, as the Court of Appeals appears to have held, then such provisions would appear to be invalid.

The decision of the Court of Appeals would likewise cast serious doubt upon the validity of provisions affording seniority credit to employees in nonessential war work who, because of directives of the War Manpower Commission or voluntarily, left such employment for work more essential to the war effort. Provisions have been negotiated protecting such employees from loss in their seniority status upon their return to their regular employment. Such provisions have been regarded by the War Labor Board as within the area of collective bargaining. *In re Retail Grocers' Association*,

15 War Labor Rep. 22 (Regional Board X (San Francisco) 1944); *In re Shell Oil Co.*, 15 War Labor Rep. 139 (Regional Board I (Boston) 1944); *In re Tulsa & Sapulpa Bakeries*, 20 War Labor Rep. 325, 326, 328 (National Board 1944); *In re Pittsburgh-Des Moines Co.*, 21 War Labor Rep. 45 (Regional Board III (Philadelphia) 1944); *In re Bendix Aviation Corp.*, 21 War Labor Rep. 145 (National Board 1945); *In re Fulton Bag and Cotton Mills*, 22 War Labor Rep. 753, 755, 762-763 (Regional Board VII (Kansas City) 1945).

These are but examples of various problems which are encountered in the day-to-day process of collective bargaining. They must be solved on a practical basis. In a large and complex organization, the operation of a layoff system based on seniority is no simple matter of lining up employees in accordance with their hiring dates. It involves not only the computation of seniority, but also the significance attributed to it, the determination of the areas within which it shall operate, and the rules as to whose seniority shall be considered in connection with the particular job, department or other unit affected by employment adjustments. As the Court said in *Aeronautical Industrial District Lodge 727 v. Campbell*, 337 U. S. 521, 526 (1949):

“* * * There are great variations in the use of the seniority principle through collective bargaining bearing on the time when seniority begins, determination of the units subject to the same seniority, and the consequences which flow from seniority. All these variations disclose limitations upon the dogmatic use of the principle of seniority in the interest of the ultimate aims of collective bargaining. * * *”

The Court of Appeals attacked the provision in question as one “which has no relevance to terms and conditions of

work" (R. 37), and thus, inferentially, not within the area of bargaining authorized by the Act.

Such reasoning, we submit, reflects a basic misconception of the function of a bargaining representative as set forth in Section 9(a) of the Act, which makes the union the exclusive representative of the employees "for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment" (*supra*, p. 6).

The authority thus conferred is to deal concerning the terms and conditions applicable to the employees in the unit. The agreed upon order to be followed in layoff, the rules to be applied in computing seniority, are not merely remote matters to be related to conditions of employment. They are, in and of themselves, among "the conditions of employment" to which the Act refers. An attack on a particular condition of employment cannot rationally be made on the ground that it is not a condition of employment within the meaning of the National Labor Relations Act, and thus outside the scope of the union's authority under the Act.

Let us assume for example that a union organizes the employees of an employer who has been following—as he had a clear right to do—an announced policy of giving preference in layoff to veterans over all other employees regardless of length of service with the employer; that following certification the union demands that this system be ended and that a system of layoffs based solely on length of service with the employer be followed instead; and that the employer takes a strong position in the bargaining that the system which he has been following is a fair one, and one which he desires to continue. Let us assume further that in the give and take of bargaining on this and other matters, the employer prevails upon the union to agree to

Appendix B

3. That the plaintiffs, and each of them, be restored to their seniority credits and rights with the defendant Company,

4. For such other and further relief as they may be entitled to, and

5. For the costs of this action.

/s/ ELBERT E. FOSTER
Attorney for Plaintiffs

APPENDIX C

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

C. R. PRICE, et als.,
Plaintiffs,

vs.

FORD MOTOR COMPANY, a Corpo-
ration, et als.,
Defendants.ORDER FOR
SUMMARY JUDGMENT

THIS CAUSE, coming on to be heard before his Honor Donald Gilliam, United States District Judge, Judge presiding at the June 7th, 1948, adjourned session of the April 1948 Term, on motion of defendants for a summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the court having considered the pleadings in the action; having heard oral argument; having found that there is no genuine issue as to any material fact and no controversial question of fact to be submitted to the trial court; and having concluded that the defendants are entitled to judgment as a matter of law;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the agreement of September 29, 1947, between the defendant Ford Motor Company and defendant Union, and every part thereof, is valid and binding upon said Union and upon the plaintiffs in this action; that, therefore, this action be dismissed; and that the defendants recover of the plaintiffs

Appendix C

their costs of action, and that the defendants have execution therefor.

This 16th day of June, 1948.

/s/ DONALD GILLIAM
United States District Judge.

made for and was binding upon all employees for whom it was made."

See also *Ryan v. New York Cent. R. R.*, 267 Mich. 202, 208-210, 255 N. W. 365, 367-368 (1934); *Donovan v. Travers*, 285 Mass. 167, 174; 188 N. E. 705, 708 (1934); *Capra v. Local Lodge No. 273*, 102 Colo. 63, 68-69, 76 P. 2d 738, 740 (1938); *Leeder v. Cities Service Oil Co.*, 199 Okla. 618, 189 P. 2d 189 (1948).

The Court of Appeals' decision that the contract provision in question was "discriminatory" in preferring "men without experience over men with experience" was reached on the conclusion that no "valid reasons for preference" exist. This was inferred on the ground that "no other facts appeared of record" (R. 38). Inasmuch as the case came up on motions for summary judgment, there could not have been any evidence "of record" of other facts or circumstances.

There was no occasion for the defendants to introduce evidence in support of its denial that the Union acted beyond its authority and of its allegation that the provisions were founded upon differences existing in the employer-employee relationship (R. 12, Para. 17). The burden was upon the plaintiff to establish, by clear and convincing evidence, that the contract provision had no reasonable relation to an authorized objective of the bargaining agent. In the absence of any such showing by the plaintiff, the defendants were entitled to rely upon presumptions comparable to those indulged in by the courts in passing upon the constitutional validity of legislative acts.

The Court in the *Steele* case treated the power of the union as bargaining representative as analogous to the power

of a legislature for the purpose of defining both the negative and affirmative aspect of that power (*supra*, pp. 34-37). In applying that analogy it tested the bargaining power of the union by the application of principles which the Court had evolved in dealing with the constitutional validity of legislation. As illustrative of these principles the Court cited *Carmichael v. Southern Coal & Coke Co.*, 301 U. S. 495, 509 (1937); *Washington ex rel. Bond & Goodwin & Tucker v. Superior Court*, 289 U. S. 361, 366 (1933); and *Metropolitan Casualty Ins. Co. v. Brownell*, 294 U. S. 580, 583 (1935). These cases demonstrate the principle that the court is not confined to the record but must consider whether any reasonable state of facts could exist which would justify exercise of the power.

Thus in the *Metropolitan Casualty Insurance* case the Court said (p. 586):

"* * * It was competent for the legislature to determine whether * * * differences exist, and upon the basis of those differences, and in the exercise of a legislative judgment, to make choice of the method of guarding against the evil aimed at. * * *"

In the *Carmichael* case the question involved was the constitutional validity of the Alabama State Unemployment Compensation Act. The Court pointed out there that a legislature not only "may make distinctions of degree having a rational basis" but that "when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it." The reason for the rule was explained (p. 510):

"This restriction upon the judicial function, in passing on the constitutionality of statutes, is not

artificial or irrational. A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalog of the considerations which move its members to enact laws. In the absence of such a record, courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function."

The Court also said (pp. 514-515):

"* * * The existence of local conditions which, because of their nature and extent, are of concern to the public as a whole, the modes of advancing the public interest by correcting them or avoiding their consequences, are peculiarly within the knowledge of the legislature, and to it, and not to the courts, is committed the duty and responsibility of making choice of the possible methods. * * *"

The question whether the expenditures provided for by that statute served a public purpose was said to be a "practical question addressed to the law-making department, and it would require a plain case of departure from every public purpose which could reasonably be conceived to justify the intervention of a Court" (p. 515).

And in discussing the choice of the beneficiaries of the tax, the Court said that the legislature "may strike at the evil where it is most felt" (pp. 519-520) and "if a state of

facts may reasonably be conceived which would support the selection, its constitutionality must be sustained" (p. 520).

The similarity between the legislative function and that of the union in negotiating a labor agreement dictates the same approach where questions arise as to the validity of negotiated labor agreements. As is true of any legislative body, a bargaining representative cannot record a complete catalog of the many considerations peculiarly within its own knowledge which move it to negotiate the complicated provisions of a labor agreement. In the absence of such a record the refusal of a court to indulge in reasonable assumptions as to the existence of conditions justifying the exercise of its power would seriously impair the ability of the bargaining representative to carry out the objectives of the National Labor Relations Act. Moreover, any different approach to the problem would inject the courts into the process of collective bargaining and, as the Court has indicated, the National Labor Relations Act was not intended to permit either the courts or the Board to pass upon the desirability of the substantive terms of labor agreements. *National Labor Relations Board v. American Ins. Co.*, 343 U. S. 395, 406-7, 409 (1952), *supra*, p. 48.

The many considerations which support the exercise of the judgment of the bargaining representative have been pointed out in this brief. We submit that, within the principle of these cases, such considerations are controlling and the decision of the Court of Appeals should be reversed.

CONCLUSION

It is respectfully submitted that the Court should reverse the decision of the Court of Appeals to the effect that the

provisions granting seniority credit for military service to veterans not previously employed were invalid as beyond the negotiating authority of the Union under the National Labor Relations Act, and should direct a dismissal of the complaint. In the event, however, that the Court should be of the opinion that the facts supporting the reasonableness of the contract provisions should be of record, the case should be remanded for a trial upon the issue of validity.

Respectfully submitted,

WILLIAM T. GOSSETT,

L. HOMER SURBECK,

RICHARD W. HOGUE, JR.,

MALCOLM L. DENISE,

Counsel.

November 26, 1952.

APPENDIX A

Sections 8(a)-(c) of the Selective Training and Service Act

Subdivisions (a) to (c) of Section 8 of the Selective Training and Service Act of 1940 read as follows (54 Stat. 890 (1940), as amended, 56 Stat. 724 (1942), 58 Stat. 798 (1944), 50 U. S. C. App. § 308 (1946)):

"Sec. 8. (a) Any person inducted into the land or naval forces under this Act for training and service, who, in the judgment of those in authority over him, satisfactorily completes his period of training and service under section 3(b) shall be entitled to a certificate to that effect upon the completion of such period of training and service, which shall include a record of any special proficiency or merit attained. In addition, each such person who is inducted into the land or naval forces under this Act for training and service shall be given a physical examination at the beginning of such training and service; and upon the completion of his period of training and service under section 3 (b), each such person shall be given another physical examination and, upon the written request of the person concerned, shall be given a statement of medical record by the War Department: *Provided*, That such statement shall not contain any reference to mental or other conditions which in the judgment of the Secretary of War or the Secretary of the Navy would prove injurious to the physical or mental health of the person to whom it pertains.

"(b) In the case of any such person who, in order to perform such training and service, has left or leaves a position, other than a temporary position, in the employ of any employer and who (1) receives such certificate, (2) is still qualified to perform the duties of such position, and (3) makes application for reemployment within ninety days after he is re-

Appendix A

lieved from such training and service or from hospitalization continuing after discharge for a period of not more than one year—

“(A) if such position was in the employ of the United States Government, its Territories or possessions, or the District of Columbia, such person shall be restored to such position or to a position of like seniority, status, and pay;

“(B) if such position was in the employ of a private employer, such employer shall restore such person to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so;

“(C) if such position was in the employ of any State or political subdivision thereof, it is hereby declared to be the sense of the Congress that such person should be restored to such position or to a position of like seniority, status, and pay.

“(c) Any person who is restored to a position in accordance with the provisions of paragraph (A) or (B) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration.”

APPENDIX B

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
NORTH CAROLINA

C. R. PRICE, H. N. GRAHAM, M. T.
MORGAN, J. F. ELAM, J. F. DAVIS,
MARION STEGALL, GRAHAM VANCE,
WOODROW BLACKMON, C. J. SCHROEDER,
and R. B. MILLER,

Plaintiffs,

vs.

AMENDED
COMPLAINT

FORD MOTOR COMPANY, a corporation, and
INTERNATIONAL UNION UNITED AUTO-
MOBILE, AIRCRAFT, AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA,
(UAW-CIO),

Defendants.

The plaintiffs complaining of the defendants, allege:

1. That the plaintiffs are citizens of the United States of America, and reside in the County of Mecklenburg, State of North Carolina.
2. That the defendant, Ford Motor Company, is a corporation, duly organized and existing according to law, with its principal offices in the City of Dearborn, State of Michigan, with large factories in said state, and is engaged in the manufacture and sale of Ford, Mercury and Lincoln automobiles, and does business in the various states of the United States, its territories and possessions, as well as in foreign countries, and that said corporation is not a North

Appendix B

Carolina corporation, but has a branch office and place of business in the City of Charlotte, County of Mecklenburg, State of North Carolina.

3. That the defendant, International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, (UAW-CIO), hereinafter designated as Union, is an affiliate of the Congress of Industrial Organizations, and is an association of automobile and other types of workers, having local chapters throughout the automobile, as well as, other industries, and has its principal office in the City of Detroit, State of Michigan.

4. That one of the local chapters of the said Union is No. 968 at the Charlotte Branch of the Ford Motor Company.

5. That the plaintiffs are all members of local chapter No. 968 of said Union, and are now and have been for some time employees of the Charlotte Branch of the defendant, Ford Motor Company.

6. That the defendants, Ford Motor Company and the Union, on or about August, 1947, negotiated and entered into a contract, whereby the Ford Motor Company, hereinafter referred to as Company, recognized the Union as the exclusive collective bargaining agency relative to rates of pay, wages, hours of employment or other conditions of employment, for all the employees of the Company, in all of the production and assembly plants and units of the Company in the United States of America, with certain exceptions, which were excluded by said agreement or contract.

7. That in violation of the constitutional rights, and confiscatory thereof, of the plaintiffs, the defendants, Company and Union, entered into said contract of August, 1947, without the consent and approval of the plaintiffs.

Appendix B

8 Said contract of August, 1947, provides in substance, as follows:

Any veteran of World War II who was not employed by any person or company at the time of his entry into the service of the land or naval forces or the Merchant Marine and who is a citizen of the United States and served with the allies and who has been honorably discharged from such training and service and who is hired by the company after he is relieved from training and service in the land or naval forces or after completion of service in the Merchant Marine shall, upon having been employed for six (6) months and not before, receive seniority credit for the period of such service subsequent to June 21, 1941, provided:

(1) Such veteran must apply for employment within ninety (90) days from the time he is relieved from such training or service in the land or naval forces or the time of his completion of such service in the Merchant Marine, and must obtain such employment within twelve (12) months from the time he is relieved from such training and service in the land or naval forces or the time of his completion of such service in the Merchant Marine.

(2) Such veteran shall not have previously exercised this right in any plant of this or any other company.

(3) A veteran so employed shall submit his service discharge papers to the company at the end of aforesaid probationary period of employment and the company shall place thereon in permanent form a statement showing that the veteran has exercised this right, such statement to be signed by representa-

Appendix B

tives of the company and the Union, and a copy thereof placed in the employee's record and a copy furnished to the Union.

It is further understood and agreed that, regardless of any of the foregoing, all veterans in the employ of the company at the time the Contract is thus amended shall receive seniority credit for their period of service, subsequent to June 21, 1941 in the land or naval forces or Merchant Marine of the United States or its allies, upon completion of their probationary period.

9. That the plaintiffs; and each of them, are non-veterans of World War II.

10. That the plaintiff, M. T. Morgan, has been in the employ of the Company for approximately ten years; that the plaintiff, Marion Stegall, has been in the employ of the Company for more than eight years; and that the other plaintiffs have been in the employ of the Company for periods of time ranging from eighteen months to over two years, except the plaintiff, J. F. Davis, who has been employed by the Company for more than fifteen years.

11. That subsequent to August, 1947, the Company, acting under and by virtue of the said contract hereinabove set forth, have employed veterans of World War II, and extended to them service seniority, that is, seniority credit for their period of service in the armed forces of the United States subsequent to June 21, 1941, irrespective of previous or no previous employment with the Company, and thereby reducing the seniority of the plaintiffs with the Company, without regard to whether said new employees are better fitted to do and perform the work of the plaintiffs.

12. That the action of the defendants is a denial of the rights, privileges and properties of the plaintiffs without

Appendix B

due process of law; that said action is discriminatory, and unlawful confiscation of property rights of the plaintiffs; that it is and amounts to a denial to the plaintiffs of their rights under the Constitution of the United States; that it deprives the plaintiffs of their seniority rights with the defendant Company without due process of law; that the plaintiffs are denied the equal protection of the laws, in violation of their rights under and by virtue of the Constitution of the United States; and such action on the part of the defendants is subject to judicial review.

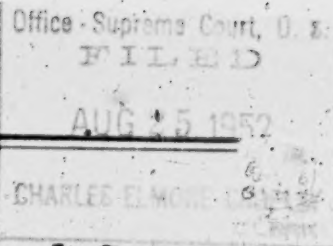
13. That the plaintiffs do not have an adequate remedy at law, and that continued unlawful action on the part of the defendants as herein set forth will cause the plaintiffs irreparable injury and damage. That the subject matter of this action involves more than the sum of \$3,000.00, plus interest.

14. That the plaintiffs have been advised that the equity powers of this Court may be invoked in their favor to enjoin and restrain the defendants from carrying out the terms of said supplementary agreement; to the end that the discrimination and unfair operation of said agreement will be prohibited and caused to be ceased.

WHEREFORE, plaintiffs pray that,

1. That an Order of this Court issue enjoining and restraining the defendants, and each of them, from enforcing and performing the terms of said contract,

2. That the defendants, and each of them, be caused to be and appear before this Court and show cause, if any they have, why such temporary restraining order or injunction should not be permanently made,



Supreme Court of the United States

October Term, 1952.

No. 193.

FORD MOTOR COMPANY,

versus

GEORGE HUFFMAN, Individually, Etc., - Respondents,

AND

No. 194.

INTERNATIONAL UNION, UNITED AUTO.
MOBILE, AIRCRAFT AND AGRICUL-
TURAL IMPLEMENT WORKERS OF
AMERICA, CIO, Etc.,

versus

GEORGE HUFFMAN; Individually, Etc., - Respondents.

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Petitioner,

Petitioner,

On Petitions for Writs of Certiorari to the United States
Court of Appeals for the Sixth Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION.

HERBERT H. MONSKY,

829 W. Broadway,
Louisville 3, Kentucky,
*Counsel for Respondent,
George Huffman, Et Al.*

SAMUEL M. ROSENSTEIN,
HERMAN G. HANDMAKER,

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Supreme Court of the United States

October Term, 1952.

No. 193.

FORD MOTOR COMPANY, - - - - - *Petitioner,*

v.

GEORGE HUFFMAN, Individually, Etc., - *Respondents.*

AND

No. 194.

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, CIO, Etc., - *Petitioner,*

v.

GEORGE HUFFMAN, Individually, Etc., - *Respondents.*

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

The District Court rendered no opinion herein.

The opinions of the Court of Appeals for the Sixth
Circuit are reported in 195 F. 2d 170 (R. 30-38).

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 193

FORD MOTOR COMPANY, PETITIONER,

vs.

GEORGE HUFFMAN, INDIVIDUALLY,
AND ON BEHALF OF A CLASS, ETC., ET AL.

No. 194

INTERNATIONAL UNION, UNITED AUTOMO-
BILE, AIRCRAFT AND AGRICULTURAL IM-
PLEMENT WORKERS OF AMERICA, CIO;
ETC., PETITIONER,

vs.

GEORGE HUFFMAN, INDIVIDUALLY,
AND ON BEHALF OF A CLASS, ETC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT.

**REPLY BRIEF FOR FORD MOTOR COMPANY,
PETITIONER**

WILLIAM T. GOSSETT,
L. HOMER SURBECK,
RICHARD W. HOGUE, JR.,
MALCOLM L. DENISE,
Counsel.

Supreme Court of the United States

OCTOBER TERM, 1952

No. 193

FORD MOTOR COMPANY, Petitioner,

vs.

GEORGE HUFFMAN, Individually,
and on Behalf of a Class, Etc., *et al.*

No. 194

INTERNATIONAL UNION, UNITED AUTO-
MOBILE, AIRCRAFT AND AGRICUL-
TURAL IMPLEMENT WORKERS OF
AMERICA, CIO, Etc., Petitioner,

vs.

GEORGE HUFFMAN, Individually,
and on Behalf of a Class, Etc., *et al.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT.

REPLY BRIEF FOR FORD MOTOR COMPANY, PETITIONER

The only purpose of this brief is to discuss an incidental factual point made by Huffman in attempting to clarify the contract provisions in issue. The arguments in Respondent Huffman's brief are addressed only to the Union's brief and, in any event, are adequately dealt with in the Company's main brief.

The factual point which respondent makes in his brief is that the seniority provisions in issue were not limited to aiding veterans without previous employment. He states that Section 13(d) provides that, regardless of the specific provisions of the Section 13(c), all veterans in the Company's employ on the date of the 1946 contract (July 30) received similar seniority credit.

Even had the latter provision applied to all veterans then or thereafter hired, it would have been valid. But the fact is that the major objective of the provisions attacked by respondent was to accord seniority credit for military service to veterans who had no previous employment. The provisions of Subsection (d) plainly were incidental to the principal objective and were conducive to starting out on a fair basis with a minimum of administrative difficulty. The provisions of Section 13(c) were operative with respect to future hirings as well as to past hirings. Section 13(d) however applied only to employees on the payroll of the company at July 30, 1946. At that time it obviously would have been impossible to ascertain from the existing Company employment records all of the facts necessary to determine which employees were covered by the provisions of Section 13(c) and whether, in fact, any employees were not covered. Moreover, the more general provisions of Section 13(d) served to give seniority credit to any veteran then on the payroll who may have failed to qualify under Section 13(c) because of some technicality, but who might have been able to qualify had he known at the time he considered employment by Ford what the requirements would be.

Respondent undertakes to argue that the provisions of the 1947 agreement also give seniority credit to all

veterans in the employ of the Company in 1947 as well as 1946 even though they had not qualified under the provisions of Section 13(c). In this he is incorrect. The reference in the 1947 agreement to the "time the Contract is thus amended" (R. 18) obviously relates to the original amendment of July 30, 1946. Any doubt as to this meaning was resolved by a subsequent interpretation of the provision adopted by the Union and the Company in 1948. That interpretation is contained in a letter, a copy of the relevant portions of which is annexed as Appendix A to this brief. For the Court to consider whether the agreement (apart from the letter amendment) should be construed differently would result in its passing upon a moot point, and it is therefore deemed appropriate to call the matter to the attention of the Court.

Respectfully submitted,

WILLIAM T. GOSSETT,
L. HOMER SURBECK,
RICHARD W. HOGUE, JR.,
MALCOLM L. DENISE,
Counsel.

APPENDIX A

February 24, 1948

Mr. Kenneth Bannon
Director, UAW-CIO
National Ford Department
281 West Grand Blvd.
Detroit 16, Michigan

Attention: Mr. Nelson Samp

Dear Mr. Bannon:

As we have previously discussed, the copying of certain provisions from the 1946 contract between Ford Motor Company and the UAW-CIO into the August 21, 1947 contract resulted in an unintentional change in the dates referred to by such provisions.

The sections concerned are Article VIII, Sections 13 and 26, and Article V, Section 5.

Article VIII, Section 13(d) provides at present:

"It is further understood and agreed that, regardless of any of the foregoing, all veterans in the employ of the Company at the time the Contract is thus amended shall receive (etc.)."

The forerunner of this provision was added to our 1946 agreement by a supplement dated July 30, 1946, and it was not intended to change the time fixed therein by the new agreement. Accordingly, we propose that this section be amended to read as follows:

"It is further understood and agreed that, regardless of any of the foregoing, all veterans in the employ of the Company on July 30, 1946 shall receive (etc.)."

* * *

Appendix A

If you will indicate the Union's agreement to the above modifications on the enclosed copy of this letter and return it to us, we will consider the contract modified accordingly.

Very truly yours,

/s/ Malcolm L. Denise
MALCOLM L. DENISE
Associate Counsel

MLD/pyp

Agreed to:
International Union, United Automobile,
Aircraft and Agricultural Implement
Workers of America, UAW-CIO

By: /s/ Ken Bannon
Director, National Ford Department

of the complaint is that the scope of the bargaining went outside the province of those matters within the legitimate interest of the bargainners and into forbidden territory.

In the absence of any possible charge of unfair labor practice that could have been brought to correct the inclusion of the complained-of clause in the contracts entered into by Ford and the Union, and in the situation that the National Labor Relations Board has not even the authority of the Adjustment Board under the Railway Labor Act to pass on the interpretation and application of collective contracts, the present case presents a much stronger case for judicial intervention than was presented in *Steele v. L. & N.*, 323 U. S. 192; *Tunstall v. Brotherhood*, 323 U. S. 210; *Graham v. Brotherhood*, 338 U. S. 232, or similar decisions in which this Court said:

"In the absence of any available administrative remedy, the right here asserted, to a remedy for breach of the statutory duty of the bargaining representative to represent and act for the members of a craft, is of judicial cognizance. That right would be sacrificed or obliterated if it were without the remedy which courts can give for breach of such a duty or obligation and which it is their duty to give in cases in which they have jurisdiction. . . . For the present command there is no mode of enforcement other than resort to the courts, whose jurisdiction and duty to afford a remedy for a breach of statutory duty are left unaffected." (*Steele v. L. & N.*, 323 U. S. 192, 207.)

IV. The Other Reasons Cited by Petitioners Are Not of Such Character as to Justify the Granting of Certiorari.

Both Ford and the Union refer to decisions of the War Labor Board recommending similar contract provisions as a compelling reason for the Court to grant certiorari to resolve such conflict. The rules of this Court would not indicate that such a situation is of the special nature and importance to persuade it to grant review. In any event the particular provision in the petitioners' contracts was not the product of the War Labor Board.

That a conflict may exist between the decision of the Court of Appeals herein and those of another circuit Court of appeals or of state courts of last resort might ordinarily weigh heavily in favor of granting certiorari. However, where the decision below is bottomed solidly on a clear cut line of decisions of this Court, such apparent conflicts appear of no importance. The question in the present case is not one of a decision so in conflict with others that needs the intervention of this Court to resolve the conflict. The question has already been resolved, and by this Court. There is no conflicting decision of the Circuit Court of Appeals.

Further it should be said that an examination of the cases cited as being in conflict does not confirm that any exists. None are directly in conflict save perhaps *Hartley v. Brotherhood* (1938), 283 Mich. 201, 277 N. W. 885. That case was relied upon by the employer (L. & N.) in the Court's consideration of *Steele v.*

JURISDICTION.

The jurisdictional requisites are adequately set forth in the separate petitioners' Petitions for Writs of Certiorari.

QUESTION PRESENTED.

Whether a provision in a collective bargaining agreement which grants an artificial seniority status to World War II veterans—by dating back their date of employment to include credit for the period of the employee's military service—where the employee *first* became an employee of the employer *after* being discharged from military service—is invalid as being an improper discrimination because it is not based upon any difference relevant to the employer-employee relationship.

STATUTES INVOLVED.

The pertinent statutory provisions appear in Appendix A, *infra*.

STATEMENT.

The statements contained in the respective petitions for writs of certiorari herein correctly state the factual background of this case, and are accepted as so doing. It may serve to point up the basic issue in this case by adding a single paragraph in the interest of clarity.

ONLY BECAUSE OF THE ATTACKED CONTRACT PROVISION, EMPLOYEES WHO ENTERED FORD'S EMPLOY IN 1945 AND 1946 ARE RETAINED IN THE CASE OF LAYOFFS OVER HUFFMAN, WHO ENTERED INTO FORD'S EMPLOY IN 1943.

ARGUMENT.

Certiorari is sought herein upon grounds that study would indicate to be non-existent. An attempt is made to make out a case for the granting of certiorari by presenting the decision below as one which if allowed to stand would result in a financial disaster of the first order. A number of lesser reasons for the Court to grant certiorari are also advanced; some being divided and subdivided.

Rather than belabor each and every ground advanced in categorical order, it would appear desirable to discuss these multitudinous grounds under three principal heads in terms of whether or not the issues of this case are such as meet the criteria established by the Court in its rules and decisions as warranting the granting of a review on writ of certiorari.

The three principal heads under which the ensuing argument will discuss the propriety of certiorari herein are:

- I. Is this cause of such magnitude in terms of large amounts of money and the great number of individuals, employees and labor or-

ganizations involved or affected by the decision below such as should persuade the Court to review?

II. Did the Court of Appeals decide an important question of federal law which has not been, but should be settled by this Court; or has decided a federal question in such a way as to conflict with applicable decisions of this Court?

III. Does the decision below circumvent or invade the jurisdiction of the National Labor Relations Board?

The answer to these questions in each instance is believed to be a clear and unmistakable "NO." Accordingly, it is believed that no sound ground exists for the Court to grant the review sought.

I. This Cause Is Not of Such Magnitude as Should Persuade the Court to Grant Certiorari on That Ground Alone.

The petitions sketch a picture of the staggering import of this case in terms of the number of other employees, employers, unions and collective contracts which may be affected by the decision below being permitted to stand. Unfortunately, the materials with which this gloomy picture is drawn are not a matter of record herein.

Peculiarly enough, both Ford and the Union in argument below (in the District Court and in the Court

of Appeals) decried the importance of the case. Various figures ranging from a handful to a maximum of a hundred or so individuals were projected as the sum total of those damaged by the complained-of contract provision.

Strangely enough in the six years and more that similar contract provisions are cited as having been in effect, there has been no flood of litigation. The picture drawn by petitioners of stark economic chaos, of a probable stampede by large numbers of litigants into the courts, does not appear to be too correct a delineation. The evidence to hand does not indicate that the decision below is of any such import.

This proceeding was decided in the District Court on the motions for summary judgment. The allegations of fact in the original complaint were all that the District Court and the Court of Appeals had to consider. The injection of issues, foreign to the printed record, of the great economic import of this case after the decisions below does not appear timely or proper.

In the state of the record in the present case, no reason for the granting of certiorari because of the special and important nature of the case would appear to have anything to back it up excepting the choice language of the authors of the petitions for certiorari. Petitioners have not succeeded in presenting a case of great magnitude as disclosed by the record. Rather, the Court is offered a most able manification.

The great stress laid upon the alleged magnitude of the possible evolvments from this decision when

coupled with the lack of other arguments of any real validity amount to a confession by petitioners that the decision below is correct and authorized. "This decision is correct but see where it might lead" is a familiar argument, but when first raised before this Court, cannot but be suspect. The passage of six years with this provision in effect free from any flood-tide of litigation would indicate that the foundation of the republic will be able to bear up under the shock of the decision below.

II. The Court of Appeals Did Not Decide Any Important Question of Federal Law Not Already Decided by This Court, Nor Does Its Decision Conflict With Applicable Decision of This Court.

The decision of the Court of Appeals is grounded upon this Court's decision in *Steele v. L. & N. R. Co.*, 323 U. S. 192, in particular, and upon a line of decisions of this Court represented by *Tunstall v. Brotherhood*, 323 U. S. 210; *Wallace Corporation v. N. L. R. B.*, 323 U. S. 248; *Graham v. Brotherhood*, 338 U. S. 232, and *Brotherhood v. Howard*, — U. S. —, 96 L. Ed. 917.

The Court of Appeals specifically applied the test laid down by this Court in the *Steele* case, and said so (R. 37). Upon the authority of the *Steele* case, that court found that the preferential seniority given some employees—

“ . . . under a contract provision which has no relevance to terms and conditions of work or the

7
normal and usual subjects of contracts between union and employer." (R. 37)

was discriminatory and the contract was held invalid. After citing at length the test laid down by this Court in *Steele v. L. & N.*, *supra*, 203, the Court of Appeals went on to say (R. 37-38) that:

"... we are cited to no case which approves the creation of seniority rights in a collective bargaining contract upon the basis of acts done or service rendered prior to entering upon the employment in which the seniority is claimed ..."

Petitioners cite as an applicable decision of this Court, with which the decision below conflicts, the case of *Aeronautical Industrial District Lodge v. Campbell*, 337 U. S. 521. The Court of Appeals examined that case (R. 35) and said:

"We see nothing in this ruling which validates contracts made without regard for the protection of the interests of all members of the Union."

The Court of Appeals carefully examined and considered the applicability of *Aeronautical Lodge v. Campbell* and quoted the basis of that decision which distinguished it from the present case. It is pointed out that the contract in *Aeronautical Lodge v. Campbell* gave priority in layoffs to union officials over other employees. The validity of this provision was sustained by this Court on the ground that the gain in continuity of administration of the union due to the retention of these officials in case of layoff was a benefit to the entire membership.

Petitioners also urge that the decision below conflicts with *Steele v. L. & N.*, *supra*. This is advanced in spite of the fact that the decision is most exactly grounded on the Steele case. The conflict asserted by petitioners is that the Steele case recognized that Congress has clothed the bargaining representative "with powers comparable to those possessed by a legislative body both to create and restrict the rights of those it represents" (323 U. S. at p. 202). This it appears authorizes a labor organization to "legislate." If Congress can do it, the Union can. Therefore they contend that the provision for seniority credit is authorized by the Steele case. At least this is the gist of what both Ford and the Union say.

The Steele case is authority for no such proposition. The legislative analogy is quoted from *J. I. Case v. N. L. R. B.*, 321 U. S. 335, and is one of several comparisons used to throw light upon the true nature and status of a collective bargaining representative. One of the comparisons so used is to a public commission with rate making powers, to fix tariffs, etc. If the petitioners would accept the obvious, that is that there has been no delegation of general legislative power, but rather something closer to the rule and regulation making authority of a public administrative body, the fallacy of contending that bargaining representatives have a general legislative power which extends to subjects outside the realm of the employer-employee relationship would of necessity be abandoned.

The decision itself is completely convincing that the Court of Appeals decided a question which has already

been before this Court a number of times. The decision is solidly based on this Court's prior decisions and is in complete harmony with them. The argument for the granting of certiorari on such grounds fail utterly.

III. The Decision Below Does Not Invade or Circumvent the Jurisdiction of the National Labor Relations Board.

Two classes of proceedings engage the attention and are the concern of the National Labor Relations Board: (1) matters concerning the designation and selecting of collective bargaining representatives, and (2) unfair labor practices.

If the negotiation and implementation of the complained-of contract clause could be attacked as an unfair labor practice, it might very well be that the exclusive jurisdiction of the Labor Board to remedy unfair labor practices has been invaded or circumvented. However, the Labor Management Relations Act, 1947 (29 U. S. C., Sec. 151, *et seq.*) spells out in Section 8 thereof (29 U. S. C., Sec. 158) what are unfair labor practices. The breach of duty of the bargaining representative in negotiating and implementing the invalid contract provision is not made the subject of any one of the charges of unfair labor practice set out in the Act.

The Labor Management Relations Act, 1947 was not intended and does not pretend to be the complete body of the law pertaining to labor relations. In at least one respect which is important here it does not

go as far as the Railway Labor Act (45 U. S. C., Sec. 151, *et seq.*), which provides in Section 3, First (1) for reference to the Adjustment Board of disputes growing out of the interpretation or application of agreements. The National Labor Relations Board (29 U. S. C., Sec. 159) has the task in representation matters to make a determination of the proper constituency of the bargaining unit, and, secondly, to make a finding as to the identity, and the propriety of the selection, of the bargaining representative. Once this has been accomplished, the Board has no jurisdiction to proceed further in these lines. It does not have the power or duty to hear or determine disputes growing out of the interpretation or application of collective agreements as does the Adjustment Board under the Railway Labor Act.

The contents of a collective bargaining contract are not the concern of the Labor Board. The only way the provisions of the contract can become the subject of a Board proceeding is if and when what has been put in or left out becomes the subject of an unfair labor practice. Then the question is not whether or not the subject matter is within the scope of authority of the employer and the labor organization to negotiate. Instead, the question is: has an unfair labor practice been committed?

Examplimg, while union authorization elections were still prerequisite to negotiating and putting into effect a union shop clause, the inclusion of such a clause without authority was the proper subject of an unfair labor practice proceeding, because in the absence of

authorization it was a violation of Section 8 (29 U. S. C., Sec. 158), for both employer and labor organization.

Interestingly enough, the Act provides that it is an unfair labor practice for an employer (29 U. S. C., Sec. 8 (a) (b) or labor organization (29 U. S. C., Sec. 8 (b) (3) to refuse to bargain collectively, but it is not an unfair labor practice to bargain too freely, that is, in excess of authority. If either Ford or the Union had refused to bargain about the complained-of clause, its propriety as a subject of collective bargaining could have been tested by an unfair labor practice proceeding. When neither objects, there would appear to be no way to test the propriety of the clause by one aggrieved excepting through the courts of law and equity.

The petitioning union projects that the discrimination struck down by the Sixth Circuit's decision herein could have been made the subject of an unfair labor practice under Section 8 (b) (1) of the Act (29 U. S. C., Sec. 8), which provides:

“It shall be an unfair labor practice for a labor organization or its agents (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed them in Section 7. . . .”

The rights guaranteed by Section 7 are the fundamental rights to organize and bargain collectively, or to refrain from doing so. The theory advanced by the petitioning union necessitates an impossible warping of Section 8 (b) (1). No issue of restraint or coercion of employees in their right to organize and bargain collectively is involved in the present case. The gravamen

L. & N., *supra*, and to the extent that it was in conflict therewith is presumably overruled.

For the most part the provisions ruled upon in the cases cited as being in conflict with the decision herein are provisions in which the particular clause, wise or unwise, did not discriminate among members of the represented group, but set standards that applied to all members of the bargaining unit alike.

It is difficult to refrain from a case by case analysis of the lower court decisions advanced as being in conflict with this decision. To do so here would, however, burden the record unnecessarily. The essence of these arguments amount to asking this Court to overrule *Steele v. L. & N.*, 323 U. S. 192, and the cases following it.

If this Court believe that *Steele v. L. & N.* should be overruled; then the petitions of Ford and the Union for Writs of Certiorari should be granted. Otherwise, certiorari should be denied.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the petitions for writs of certiorari should be denied.

Respectfully submitted,

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APPENDIX A.

Pertinent Statutory Provisions Labor Management Relations Act, 1947 29 U.S.C., Section 151, et seq.

"Section 157—Rights of Employees.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities . . .

"Section 158—Unfair Labor Practices.

(a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

"(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. * * *

"(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act; .

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

"(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a);

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, * * *

"(5) to require of employees covered by an agreement authorized under subsection (a)(3) the payment, as condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. * * *

"Section 159—Representatives and Elections.

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be

the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rate of pay, wages, hours of employment, or other conditions of employment: . . .

"Section 160—Prevention of Unfair Labor Practices.

(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. . . ."

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SUPREME COURT OF THE UNITED STATES

October Term, 1952.

No. 193.

FORD MOTOR COMPANY,

Petitioner,

versus

GEORGE HUFFMAN, Individually, and on Behalf of
a Class, Etc., Et Al.,

Respondent.

No. 194

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, CIO, Etc.,

Petitioner,

versus

GEORGE HUFFMAN, Individually, and on Behalf of
a Class, Etc., Et Al.,

Respondent.

On Writs of Certiorari to the United States
Court of Appeals for the Sixth Circuit.

BRIEF FOR RESPONDENT, GEORGE HUFFMAN.

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Supreme Court of the United States

October Term, 1952.

No. 193.

FORD MOTOR COMPANY,

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GEORGE HUFFMAN, INDIVIDUALLY, AND ON
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No. 194

INTERNATIONAL UNION, UNITED AUTOMO-
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PLEMENT WORKERS OF AMERICA, CIO,
ETC.,

Petitioner,

v.

GEORGE HUFFMAN, INDIVIDUALLY, AND ON
BEHALF OF A CLASS, ETC., ET AL., *Respondent.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT, GEORGE HUFFMAN.

OPINIONS BELOW

The majority opinion of the Court of Appeals (R. 30-38) written by Circuit Judge Allen and concurred in by Chief Judge Hicks is reported in 195 F. 2d 170, as is a brief dissent by Circuit Judge McAllister. The District Court rendered no opinion.

JURISDICTION.

Petitioners in their respective briefs have correctly stated the basis upon which the jurisdiction of this Court was invoked.

QUESTIONS PRESENTED.

The petitioner, Ford, raises one question:

Is the provision contained in collective bargaining agreements entered into by Ford as employer and UAW as statutory collective bargaining representative which gives to represented employees first hired by Ford following discharge from military service in World War II an artificial hiring-in date by adding credit for the period of such military service to compute their seniority status invalid?

The Court of Appeals held the provision invalid. Ford seeks a reversal of this holding.

The petitioner, UAW, raises the same question as Ford, and also a second question:

Do the Federal Courts have jurisdiction where a statutory bargaining representative breaches its duty or exceeds its powers as representative where there has

been no prior resort to administrative procedures of the National Labor Relations Board?

This question was not urged below, and is not adverted to in the opinion of the Court of Appeals.

STATUTES INVOLVED.

Both petitioners cite at some length sections they deem applicable from the National Labor Relations Act, as amended; from the Selective Training and Service Act, as amended, and from the Veterans' Preference Act of 1944. In addition UAW cites the Railway Labor Act. It would appear to be of no value and needlessly repetitious to set out the same again.

It would appear highly useful to add one small quotation to the "Statutes Involved" listed by petitioners. This addition is from Section 2 of the National Labor Relations Act, as amended, which section contains definitions of various terms used in the Act. Subsection (4) thereof defines "representatives" simply as including

any individual or labor organization."

STATEMENT.

The Court of Appeals held that the contractual provision giving an artificial seniority credit to World War II veterans who were first hired by Ford after their discharge from military service was invalid. The judgment (R. 30-38 at page 38) states:

directly to the heart of this case in an admirably concise and clear-cut manner. It recognizes the all-important issue in the case (at page 3 of the brief) as being:

“ . . . what is a legitimate interest of the bargainners in a collective bargaining relationship, and what, on the other hand, is forbidden territory . . . ”

However, the CIO then urges the validity of the challenged clause upon the basis that it is socially desirable. Disregard whether the particular contract provision under examination is socially desirable or undesirable—and there is a good argument either way—and the question is automatically raised: Is the power of a statutory collective bargaining representative dependent upon or related to the social desirability of its goals?

“A good union,” says CIO, “conscious of the needs of society and its responsibility to the community, will attempt . . . ” to bargain for socially desirable aims. No reference is made to the source of the authority for a statutory collective bargaining agent so to do. Nor is any attempt made to define by what standards it is to be determined what is socially desirable and what is socially undesirable.

In total effect this line of argument is one that would treat the mandate of Congress as embodied in the National Labor Relations Act, as amended, as one authorizing labor unions and the so-called labor movement to use the statutory bargaining authority which

vests in them by their becoming designated as bargaining representative pursuant to the processes under the Act to advance the particular union's social political and economic theories and philosophy. This is, of course, with the proviso that the particular theory or philosophy advanced thereby is "socially desirable" by undefined and decidedly nebulous standards.

This is a complete misconception of the role of the union functioning as a statutory collective bargaining agent. So to hold amounts to according to the statutory representative a role of overlordship over those whom it represents, and to permit it to hand down ukases and decrees as between those whom it represents upon considerations which are outside the scope of the representative's competence.

The union functioning as collective bargaining representative pursuant to Section 9 (a) of the Act is a representative. That is the word used in the Act, and the practices and procedures that have been sanctioned by the Labor Board, by the Courts, and by custom leave no room for doubt that the role of the Union so functioning is *representative*.

Attempts at precise definition are always difficult and in such a dynamic area as labor-management relations it has not been possible to pin down, with exactness, what the role of the statutory representative for the purposes of collective bargaining may be. Attempts to treat of collective bargaining and of the parties thereto and their respective and reciprocal rights and duties, powers and liabilities, privileges and immunities have sought for clarity by way of analogy among more

settled legal precepts. Much underbrush has been cleared away, but no complete answer has been produced which spells out in unequivocal language just exactly what the limitations of collective bargaining are, nor who has what right to do what, to or for whom, for what purposes.

It is not proposed here to don any mantle of omniscience and produce the word which will put a final period to the many doubts, uncertainties and equivocations necessarily inherent in the complexities of collective bargaining in its present state of development in our law. However, in the matter under consideration on this appeal there are a few things which are sufficiently fixed by law, by Labor Board interpretation and application, by Court decision and by custom and practice to provide a framework for reference which is stable.

ITEM ONE. "Representative" is the word used in the Act when referring to the exercise of the collective bargaining function. It is obviously a deliberate choice and intended to mean something other than "Agent."

The fourth (4th) literary paragraph of the Act, Section 1 of Title I, declares it to be the policy of the United States to encourage collective bargaining and to protect workers in the

... designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

Subsection (4) of Section 2 of Title I of the Act defines "representatives" simply as including

“ . . . any individual or labor organization.”

While it may be difficult to define fully what is meant by using the term “representative,” it is sufficient for the purpose of this discussion to state certain minimum restrictions which are inherent in the term. For one, a representative functioning as such—whether an individual or an organizational apparatus—is an artificial entity (if that), and has no separate identity from the person or persons being represented. The representative exists as such only because there is something to be represented, and it exists to act for, to serve in the name, place and stead of, to wear the shoes of the represented.

It would seem fair to say that a representative *as a representative* exists to serve the represented. It is always the servant, never the master. It can have no differing or adverse interests as representative from those represented, else it ceases to be a “representative” and assume a separate identity.

‘ITEM TWO, The collective bargaining representative represents a “class.” Section 9 (a) of Title I of the Act reads:

“Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or the other conditions of employment”

In *Steele v. L. & N.*, Mr. Chief Justice Stone wrote:

"... the bargaining representative, when chosen ... represents ... the class, and not the majority."

In the case of *Wilson & Co., Inc. v. N. L. R. B.* (C. A. 8th), 115 F. 2d 759, 765, the Court sums up the collective bargaining obligation in admirable language, in part saying:

"It obligates the employer to bargain in good faith both collectively and exclusively with the chosen representative of a majority of his employees with respect to all matters which affect his employees as a class, including wages, hours of employment and working conditions." (Citing cases.)

It is in this indisputably correct concept of the labor organization functioning as a statutory collective bargaining representative being *representative of a class* that the answer to the problem raised would appear to lie.

Both the Wagner Act and its present amended form provided for a group of persons in an "appropriate unit" to be represented by a collective bargaining representative or agent. The representative may be—and usually is—a labor organization. The labor organization usually is a voluntary unincorporated association.

The group of persons who may constitute an "appropriate unit" has been a much litigated matter.

However, the general criteria followed by the Labor Board is uncomplicated.

"The act imposes upon the Board the duty to determine, whenever the question arises, whether a proposed or existing bargaining unit is 'appropriate' in the sense that it will 'assure to employees the fullest freedom in exercising the rights guaranteed by the Act.' (Cf. Sec. 9 (b)) . . .

"In resolving unit issues, the Board's primary concern is to group together only employees who have substantial mutual interest in wages, hours, and other conditions of employment . . ."

Fifteenth Annual Report of the National Labor Relations Board, pages 38-39.

It would seem clear that the statutory representative is representative for the group or unit in those matters in which they have a community of interest; that is, the agent represents the group or unit in its group interest—the "substantial mutual interest in wages, hours, and other conditions of employment" which is the *raison d'être* for the group being treated as a unit.

ITEM THREE. In the representation of a class the representative has the duty to represent fairly all those for whom it acts, and cannot bargain for the class upon the basis of considerations which are not related to the class as a class.

Fortunately for the sanity of lawyers and judges the usual situations in which the authority and duties of a class representative are involved are much simpler than those arising out of the collective bargaining complex. A glimpse at an analogous situation promises some degree of illumination.

"Under the uncontradicted facts the seniority system as to Huffman and those similarly situated is discriminatory. Plainly, a contract which, in case of layoff, prefers men without experience over men with experience, no other facts appearing and no other valid reasons for preference existing, is discriminatory. When an employee who entered the Ford plant in 1945 is retained in layoffs over Huffman, who entered in 1943, Huffman is discriminated against."

These are the *uncontradicted* facts. It is with these operative facts that petitioners must deal. Extended discussion of probabilities and possibilities and advisabilities can not be permitted to obscure these *uncontradicted* facts, because the decision turns on them.

Clarification.

Before proceeding with any discussion of the arguments advanced by the petitioners, it would appear desirable to attempt to clarify the contract provision struck down by the Court of Appeals. A reading of the arguments contained in petitioners' briefs could convey an erroneous (and obviously not so intended) impression that the contested clause gave preferential seniority treatment *only* to those young veterans who had not worked anywhere else, but who—such is the inference—went from school to the armed services and on discharge to Ford. *This is incorrect.*

That is what is said in Section 13 of the July 30, 1946, contract between Ford and UAW (R. 3, para. 4, subsection "(c)"), but the very next subsection "(d)"

spells out that, regardless of the foregoing clause, *all veterans* then in the employ of Ford should receive such credit. Identical provisions appear in the next (August 21, 1947) collective agreement between Ford and UAW (R. 17-18). The third (September 28, 1949) agreement froze and preserved such preferential seniority credits (R. 21, Sec. 12(c)) but dropped the clause out as to any future hire-ins.

It appears clear that the clause was not limited to aiding the extremely youthful, or those without previous employment records, but even gave preferential seniority to those who had a job they could reclaim with another employer by virtue of the re-employment provision of the Selective Training and Service Act, 54 Stat. 890, 5 U. S. C. 308. Also, the same preferential seniority credit applied to men who after discharge obtained employment elsewhere and subsequently were hired by Ford. Too, one who lost his re-employment rights under that statute by not reclaiming his job with Ford could later be hired in and accorded full seniority over one who had carefully preserved the right to be re-employed accorded him by the Congressional mandate.

Huffman's Class.

Also it appears desirable at this state to comment briefly upon the constituency of the class of which the respondent, Huffman, is a representative. As has been pointed out by the adverse parties herein, the class for which Huffman brought his action included veteran and non-veteran alike. The decision of the Court of Ap-

peals upholding his claim uses language which indicates that court's belief that all members of the class are veterans. No point has been made of this on behalf of the respondent because it is apparent from the treatment accorded the item by the adversary parties that it is conceded that the benefits of the Sixth Circuit's decision do enure to all members of the class, whether veterans or not. The matter is referred to here only in the interests of clarity.

SUMMARY OF ARGUMENT.

I.

Although not urged below, nor adverted to in the judgment of the Court of Appeals, the petitioner union argues that the Federal Courts do not have primary jurisdiction to enforce the statutory obligation of the collective bargaining representative not to use its collective bargaining authority granted to it and being exercised pursuant to Section 7 of the National Relations Act, as amended, discriminatorily or unfairly.

The National Labor Relations Board has indicated express authority by the Act to prevent any and all violations of Section 7. The Board's authority (under Section 10 (a) of the Act) is to prevent the unfair labor practices set out in Section 8 of the Act. All the unfair practices listed in Section 8 may be violations of Section 7, but the converse is not true. All violations of Section 7 are not necessarily unfair labor practices.

The National Labor Relations Board has indicated that it may in a proper case revoke its certification of

a collective bargaining representative found guilty of using its bargaining authority in a discriminatory manner (R K O Radio Pictures, Inc., 61 N. L. R. B. 112). It has not ever done so, and its indication that it may, seems directed at something other than circumstances such as concern us here.

It is beyond the power of our imagination to conceive of the Labor Board denouncing the UAW's implementation of that International Union's public relations policy as an unfair labor practice within the meaning of Section 8 (b) (1) of the Act prohibiting the restraint or coercion of employees in the exercise of their rights under Section 7 of the Act to organize and bargain collectively.

Further, there does not appear to be any satisfactory remedy which the National Labor Relations Board could invoke. In the R K O case it is indicated that the Board in a proper case could and would revoke certification. Such an action would not remedy anything in the present case.

II.

The contractual provisions struck down by the Court of Appeals discriminated against men with more experience—a longer record of actually working on the job for Ford—and preferred over them, men of less experience. The basis of the discrimination has no relationship whatsoever to the employer-employee relationship. Factors of age, skill, experience, ability, productivity, merit and every other factor ordinarily considered relevant were dropped from consideration

entirely. The sole test was how much time was spent in military service from and after June 21, 1941. Variations are permissible, but they must be based on *relevant differences* (Steele v. L. & N. R. Co., 323 U. S. 192, 202, 203).

The (union) petitioner's argument that the seniority provisions in question were in the interest " . . . of the union as a whole . . . " because thereby was avoided a repetition of the bitter conflict between veteran and *organized labor* which took place after World War I betrays that the (union) petitioner used its bargaining authority *not* for the purposes intended by the National Labor Relations Act, but to implement and advance the public relations policies and the political, economic and social theories and philosophy of the International Union. The Act says "representatives" not *union*.

Designation of a statutory collective bargaining representative by and through Labor Board procedures under the National Labor Relations Act, as amended, is for the purpose of *representation* in collective bargaining. The representation is of a particular group of employees, and the bargaining authority is to be exercised for their benefit as employees of their particular employer. The welfare of organized labor generally cannot and does not take precedence over the duty—for all practical purposes, a fiduciary duty—to exercise the statutory bargaining authority in the interests of the members of the particular group to *represent* whom the authority has been reposed in the representative.

The analogy used by this Court in *Steele v. L. & N. R. Co.*, 323 U. S. 192, 202 (*Cf. J. I. Case v. N. L. R. B.*, 321 U. S. 332), likening a bargaining representative's role to that of a legislature is a useful one. However, the manner in which it has been seized upon by Ford and UAW as their complete justification for the seniority clause in question is, we are sure, a far cry from what this Court meant or intended. A bargaining representative performing its function does not by virtue of the legislative analogy become entitled to fill in the gaps left by Congress.

THE ARGUMENT.

- I. The Federal Courts Have Primary Jurisdiction to Enforce the Statutory Obligation of the Collective Bargaining Representative Not to Use Its Collective Bargaining Authority Granted to It and Being Exercised Pursuant to Section 7 of the National Labor Relations Act, as Amended, in a Discriminatory or Unfair Manner.

Item V of UAW'S argument (pp. 47-51 of its brief) insists that respondent should have resorted to the administrative processes of the National Labor Relations Board before seeking judicial relief. It is argued that the effect of the language in the opinion of the Court of Appeals that the failure of the representative in collective bargaining to represent employees fairly and without discrimination violates Section 7 (of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U. S. C. 141) is to find that

an unfair labor practice has been committed. Therefore—so the union argues—an unfair labor practice charge should have been filed against UAW, and not the suit in the district court.

Unfortunately for this argument a study of Section 8 of the Act which lists the specific charges of unfair labor practices that may be brought does not reveal any charge than can be brought in the circumstances under discussion. The petitioner appears to believe that a charge could have been brought under Section 8 (b) (1) spelling out that it is an unfair labor practice “. . . to restrain or coerce (a) employees in the exercise of the rights guaranteed them by Section 7”

Section 7 is the basic declaration of employees' rights and provides that:

“Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection”

The respondent's complaint is not that there has been any restraint or coercion by anyone to interfere with self-organization, nor to refuse or deny collective bargaining. To the contrary, the complaint is that the bargaining went too far and too far afield.

This part of UAW's argument has been answered for all practical purposes by the CIO in its brief already filed herein as Amicus Curiae, and in the belief

that the treatment accorded it there is completely adequate, the liberty is taken of quoting the same as follows:

"The assumption that discrimination would violate Section 7 of the National Labor Relations Act, however, does not necessarily require the conclusion that the exclusive remedy for this violation lies with the National Labor Relations Board. While it is true, as stated by the UAW, that the Act, unlike the Railway Labor Act, does provide for administrative remedies for unfair labor practices, it is also true that the National Labor Relations Board is not expressly given authority to police violations of Section 7. Section 10 (a) of the Act empowers the Board to prevent the unfair labor practices listed in Section 8 of the Act. But it is not necessarily true, that all violations of Section 7 also constitute unfair practices under Section 8.

"The Board itself has never passed on the question of whether discriminatory action by a statutory collective bargaining representative outside of the legitimate scope of its bargaining territory would constitute an unfair labor practice. The Board thus far has determined only that, in the exercise of its powers under Section 9 to certify the collective bargaining representative, it will not regard itself as being precluded from taking appropriate remedial action such as redetermination of the bargaining unit or a revocation of the certification where it finds discrimination being practiced (RKO Radio Pictures, Inc., 61 N. L. R. B. 112).

"The Board, in fact, has never used the power which it asserted in the RKO case and in similar cases insofar as we are aware. It certainly has not yet decided that it has the additional power to prevent discrimination by determining that such discrimination constitutes an unfair labor practice under the Section 8 (b) (1) declaration that it is an unfair labor practice for a union to 'restrain or coerce . . . employees in the exercise of the rights guaranteed in Section 7.'"

Even were this a case in which the Labor Board could and did act, the action it indicated in RKO that it would take—decertification—is no remedy at all so far as the aggrieved individuals are concerned. Although the cases of *Steele v. L. & N. R. Co.*, 323 U. S. 192, and *Tunstall v. Brotherhood*, 323 U. S. 210, arose under the Railway Labor Act, and the instant case arises under the National Labor Relations Act, as amended, there seems no doubt that discrimination between employees is a violation of the statutes under either statute. Further under neither statute is provision made for an administrative remedy, and, as pointed out above, the possible action of revoking certification in the instant case provides no relief at all to the aggrieved individuals. It would follow then that the Federal Courts do have primary jurisdiction in the instant case on exactly the same grounds that this Court decided the matter of jurisdiction in the *Steele* and *Tunstall* cases.

- II. The Contractual Provision Giving an Artificial Seniority Credit for the Period of Their Military Service to World War II Veterans First Hired by Ford After Their Discharge From Military Service Was Properly Held To Be Invalid.

THE UNION'S ARGUMENTS.

The reasons—other than the jurisdictional question—urged by UAW to upset the decision of the Court of Appeals are divided by it into four heads. They are slightly curious in that they—while stated variously—are grounded upon two fundamental assumptions:

1. What was done was in the interests of organized labor and advanced the cause of the labor movement.
2. The union was only doing the same thing that Congress tried to do with Section 7 of the Selective Training and Service Act, excepting that the union did it better and more fully and thoroughly.

These are interesting assumptions. However, as justification for negotiating the provisions struck down by the Court of Appeals they appear to lack adequate sanction in either the applicable legislation or in any judicial construction to such effect.

Briefs have heretofore been filed here by both Ford and UAW. Likewise, the CIO as Amicus Curiae has filed a brief with the consent of all interested parties. The CIO brief is of particular interest because it goes

collectively as an entity in itself with rights superior to those whom it represents.

2. The Union bargaining collectively for an aggregation of workers represents them as a "class" and its authority extends to all matters which affect the employees as a class of employees of a particular employer.

3. The Union bargaining collectively for an aggregation of workers has the duty to represent fairly all those for whom it acts, and, bargaining for the "class," it cannot bargain upon the basis of considerations which are not related to the class as a class.

4. Relevancy to the collective interests of the class as employees of the particular employer is the test of whether variations in the terms of a contract based upon differences between employees is proper, and the fact that one group are unskilled laborers is relevant while the fact that one group has three or more children each and another group has none is not relevant.

5. Preference for veterans of military service is a legitimate concern of a Legislature representing the entire body politic, but not of a bargaining representative of a class whose only common characteristic is that they are all employed by a particular employer.

CONCLUSION.

Huffman and his class have been discriminated against. Ford and UAW chose to negotiate a contract which in case of layoff prefers men with less working experience over them; no other relevant facts appearing, and for no valid reason that had anything directly to do with the employer-employee relationship. That UAW was motivated to do this to advance the cause of organized labor does not absolve it of having breached its duty as statutory bargaining representative. The National Labor Relations Act, as amended, does not confer bargaining authority upon a representative to use to advance its theories of social desirability at the expense of the individuals being represented.

Further, since both appellees moved for summary judgment in the District Court and both admitted the material allegations of the petition, Ford's request for a trial on the issue of validity of the contract would appear contradictory, inconsistent and late.

WHEREFORE, it is prayed that the Court sustain the Court of Appeals.

Respectfully submitted,

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Office - Supreme Court
JUL 1 1952

IN THE
Supreme Court of the United States

OCTOBER TERM, 1952

No. **194**

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SUPREME COURT, U.S.

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, CIO,**

**An Unincorporated Voluntary Association,
Petitioner,**

vs.

**GEORGE HUFFMAN, Individually, and on Behalf
of a Class, etc.,
Respondents**

**PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

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Assuming, *arguendo*, a question of priority between a class consisting of the bondholders of Company X and a class consisting of the holders of the preferred shares of that company, the matters that may be taken into consideration by those representing the shareholders' class are simplified. The ingenuous soul who proposes in the course of settlement negotiations to pay off all bondholders who serve in the armed forces at one hundred (100) cents on the dollar while the remaining bondholders would get sixty (60) cents on the dollar instead of a tentative eighty (80) would not get very far. The fact that he, himself, was not a veteran and could not be seeking to profit by the proposal might win acceptance of his good faith but not of his judgment.

Also, his complete failure to comprehend his role and the limitations on that role would be most apparent. Some kindly soul might explain to him that the *class* being *represented* were *bondholders as such*. That there are no distinctions between the individual members of the class *as a represented class* which the representative has any right or interest in, nor any right to interest himself in. The collective interest of the represented class which brings them together and makes them a class has no connection with when they were born, nor where; nor what they did before they acquired their bonds; nor what their racial ancestry may be. The color of their skin, their eyes, like the church they attend or the fact that one treasures a medal for regular Sunday School attendance and another has none, are not *relevant differences*. Life begins for mem-

bers of the "class" as of the time they became members of that class. Whether it begins at forty (40) or in 1945, what their individual pre-existing histories may be—while perhaps interesting and even admirable—has nothing whatsoever to do with the creation and existence of the specific class.

Since a representative exists to serve a class in its aspect as a class, it would seem beyond debate that it is an unauthorized assumption of authority for that representative to seek to divide the class and to exercise authority to pick and choose between them. Not only would this seem to be unauthorized, but it is such a negation of the very elements which gave birth to the class which the representative is created to serve as to amount to a betrayal of that highest degree of good faith, that *uberrima fides*, which a representative is customarily held to owe to those whom it serves.

It would seem of the warp and woof of the relationship between those who are represented and the representative that the authority of the representative in the collective bargaining complex is to represent the collective interests of the particular group or class—appropriate *unit* as the Act puts it—as a collection. The representation is not of the individuals or the majority or the minority, but of the entire class or collection as to matters which affect the workers as a class.

While not quite so simple as the circumstances of the representation of the bondholders, the analogy holds in that the representation is of workers as workers; as employees of the particular employer. The cohesive

element that makes the represented workers a group, a *class*, an appropriate *unit*, is the one common factor of employment by the particular employer. Since the Act has banned any control upon who shall be hired and placed such control outside the pale so far as Unions are concerned, whom the employer has hired and what they were before being hired may be of interest to the employer and even may have influenced the hiring, but this is a unilateral interest of the employer and not within the scope of the legitimate interest of the representative.

It would be a most inappropriate thing—exactly what was struck down by this Court in the matter of *Wallace Corporation*, cited herein—to permit a representative to become such, and then permit it to turn around and lash out at those whose servant the representative has been created to be. The Congress did not intend to create a Frankenstein.

That limits do exist as to what a labor organization may do to those it represents has been made clear by this Court in a number of decisions:

Wallace Corp. v. N. L. R. B., 323 U. S. 248, 65 S. Ct. 238, 89 L. Ed. 216;

Steele v. L. & N. R. Co., 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173;

Tunstall v. Bro. of L. F. & E., 323 U. S. 210, 65 S. Ct. 235, 89 L. Ed. 187;

Graham v. Bro. of L. F. & E., 338 U. S. 232, 70 S. Ct. 14, 94 L. Ed. 22;

Elgin, J. & E. R. Co. v. Burley, 325 U. S. 711, 89 L. Ed. 1886, 65 S. Ct. 1282, and on rehearing 327 U. S. 661, 66 S. Ct. 86, 90 L. Ed. 928.

In Wallace Corp., *supra*, the opinion states:

“The duties of a bargaining agent selected under the terms of the Act extend beyond the mere representation of the interests of its own group members. By its selection as bargaining representative, it has become the agent of all the employees charged with the responsibility of representing their interests fairly and impartially . . .”

Need it be said that *representing all* fairly and impartially means that the majority is not permitted to do things for or to a minority that sets up arbitrary and irrelevant distinctions or discriminations. That the guiding rule by which to test the motivations of the representative is whether the bargaining power is being exercised in the interest of the entire collection.

Case of Monsieur Henri Wines, Ltd.

The case of Monsieur Henri Wines, Ltd., 44 N. L. R. B. 1310, 11 L. R. R. M. 84, is deserving of some inspection. Here a group of employees (the majority) designated the Distillery, Rectifying and Wine Workers International Union, A. F. L., as their bargaining representative. The union signed a closed-shop agreement with the employer. The applications for membership in the union of all the employees were rejected by the union. They were not permitted to work, and were all replaced by non-employee members of the union. This was prior to the present (amended) Act and a closed-shop agreement was permissible in conformity with the proviso to Section 8(3) of the then (Wagner) Act.

Treating the happenings as the obvious betrayal by the agent of ". . . those upon whose designation its authority to act depended . . ." that it was, the Labor Board struck down the defense that the closed-shop agreement was permitted by the proviso to Section 8(3) and was therefore a defense to the otherwise non-discriminatory discharges.

Without spelling it out too precisely it appears evident that a designated agent upon designation is charged with the duty to represent faithfully the group whose majority has designated the agent. No private axes may be ground, no differing philosophy may be pursued, *no power is obtained except to act in a representative capacity for the group, class or unit of employees of the particular employer.*

ITEM FOUR. *Relevancy* is the true test of whether or not the representative is being true to its trust in the exercise of the representative function in collective bargaining. The authority reposed in the representative is to represent for the purposes of collective bargaining as to "rate of pay, wages, hours of employment, or other conditions of employment" (Section 9 (a) of Act).

Since the representative functioning as such represents a class (or unit appropriate) which may consist of indefinite numbers, ranging from few to many thousands, and in some cases embraces the rates of pay, wages, hours of employment, or other conditions of employment of workers with a thousand different skills and degrees of skill and of varying periods of time spent in the service of the particular employer, in-

numerable differences come into play between the represented workers. Obviously, the problem is not so simple as to negotiate for a class of bondholders where all stand on the same footing as to the value to be fixed for each bond.

The difference between the represented workers are, however, an inherent part of their employment and arise out of and are a part of the job itself. It was of this difference that *Steele v. L. & N.* speaks:

"This does not mean that the statutory representative of a craft is barred from making contracts which may have unfavorable effects on some of the members of the craft represented.

"Variations in the terms of the contract based on differences relevant to the authorized purposes of the contract in conditions to which they are to be applied, such as differences in seniority, the type of work performed, the competence and skill with which it is performed, are within the scope of the bargaining representation of a craft, all of whose members are not identical in their interest or merit.

Cf. Carmichael v. Southern Coal & Coke Co., 301 U. S. 495, 509, 510, 512, 81 L. Ed. 1245, 1252-1254, 57 S. Ct. 868, 109 A. L. R. 1327, and cases cited; Washington, ex rel. Bond, Goodwin & Tucker v. Superior Ct., 289 U. S. 361, 366, 77 L. Ed. 1256, 1260, 53 S. Ct. 624, 89 A. L. R. 653; Metropolitan Casualty Ins. Co. v. Brownell, 294 U. S. 580, 583, 79 L. Ed. 1070, 1072, 55 S. Ct. 538. Without attempting to mark the allowable limits of differences in the terms of contracts based on differences of conditions to which they apply, it is enough for present purposes to say that the statutory power to represent a craft and to make con-

tracts as to wages, hours and working conditions does not include the authority to make among members or the craft discriminations not based on such relevant differences. Here the discriminations based on race alone are obviously irrelevant and invidious. Congress plainly did not undertake to authorize the bargaining representatives to make such discriminations. *Cf. Yick Wo v. Hopkins*, 118 U. S. 356, 30 L. Ed. 220, 6 S. Ct. 1064; *Yu Cong Eng. v. Trinidad*, 271 U. S. 500, 70 L. Ed. 1059, 46 S. Ct. 619; *Missouri, ex rel. Gaines v. Canada*, 305 U. S. 337, 83 L. Ed. 208, 59 S. Ct. 232; *Hill v. Texas*, 316 U. S. 400, 86 L. Ed. 1559, 62 S. Ct. 1159.

"The representative which thus discriminates may be enjoined from so doing, and its members may be enjoined from taking the benefit of such discriminatory action. No more is the Railroad bound by or entitled to take the benefit of a contract which the bargaining representative is prohibited by the statute from making." (Italics added.)

The scope of the representative's authority must be tailored to fit that which it is created to serve. That seniority is a condition of employment and as such a proper subject for collective bargaining by the representative is not debatable. Nor is it contended that the representative is prohibited from bargaining for or obtaining a poor or insufficient or unsatisfactory clause. Honest mistakes, errors in judgment, bowing before superior economic force are a part of collective bargaining. However, this is quite different from agreeing to, seeking, bargaining for matters which

are bottomed upon considerations foreign to the collective interests because based upon matters outside the relationship between the represented workers in their class interest and their employer.

Variations which are based upon the skill or ability of a worker at his job; upon his length of service with the particular employer or upon his particular job or in a particular department or division; upon his production rate, or upon the nastiness of a certain operation, or a difference in working hours as a late shift or split hours on Sunday work: these have meaning in terms of evaluating the services rendered. These things are relevant factors of, on and to the job.

How many children a man has; whether he is Caucasian or Negro or Asiatic; whether he has red hair or black; whether he is a farmer, marine, ex-gob, former play boy or conscientious objector, veteran or non-veteran; whether Catholic, Protestant, Mohammedan or Jew; these cannot be weighed in the scales to determine what his rights are as a member of the class. A citizen is a citizen. Just as the Constitution and the Courts strike down as invidious legislative provisions which discriminate between citizens as such; so in the smaller and more restricted area of collective bargaining a worker is a worker and as such may not be discriminated against.

The likening of the bargaining representatives to a Legislature referred to in the Steele case (*Cf. J. I. Case v. N. L. R. B.*) is most apt. In innumerable decisions the courts have held that Legislatures may legislate as to classifications if such classifications are

reasonable and based upon proper and justifiable distinctions. This Court capsulized proper distinctions in *Casualty Insurance Co. v. Brownell*, 294 U. S. 580, 79 L. Ed. 1070, 55 S. Ct. 538, saying:

"The ultimate test of validity is . . . whether the differences between them are pertinent to the subject with respect to which the classification is made . . . If these differences have any rational relationship to the legislative command, the discrimination is not forbidden . . ."

The analogy referred to likening the functioning of the representative for the purposes of collective bargaining to that of a Legislature is useful for many purposes. A Legislature represents all the people. Subject to constitutional limitations, it enacts laws. Variations are permissible as to various classifications of persons, but the variations must be based upon differences relevant to the purposes for which the legislative function is being exercised. Arbitrary, capricious or discriminatory legislation not sanctioned by the operative facts giving rise to the legislation are stricken down by the Courts.

In the matter of preferential legislation for veterans, the very factors that called men into military service are among the matters which cause governments to be instituted. The interests of the entire class of citizens has made it necessary to call certain of them into the service of the State. It has been found to be in the public interest to compensate or reward them for services rendered to all and on behalf of all. There is a direct connection between their service and the class the Legislature represents.

The collective bargaining representative does not represent the entire body politic. It does not represent the State nor the Government as such. Its interest attaches, its role begins with the represented persons already employed as workers. In the Lockheed case (*Aeronautical Lodge v. Campbell*, 337 U. S. 521, 93 L. Ed. 1513, 69 S. Ct. 1287) the propriety of special preference for the Union's leadership—its fighting force—because the welfare of the group or class is forwarded and advantaged thereby was upheld. There was a *relevant* relationship.

However, both the Congress and the Union would be in error to legislate giving preference to all veterans named "Jones" just because their name is "Jones." In the case of Congress, its legislation may be for veterans, all veterans, because their status as veterans has a relationship to the purposes for which Congress represents all, veterans and non-veterans alike. Whether any of them are named "Jones" has no such functional relationship. In the case of the Union, it represents workers, and only workers, and only as workers. Whether any of them are named "Jones" has no functional relationship, *no relevancy whatsoever*.

Without belaboring any further the points discussed thus far, it would seem axiomatic to say:

1. The Union bargaining collectively for an aggregation of workers is a "representative" created and existing to function in a representative capacity without any right or power to bargain

REASONS FOR GRANTING THE WRIT

1. The Court of Appeals, in reversing the District Court has decided an important and substantial question of federal statutory interpretation which has not been but should be settled by this court.
2. The decision of the Court of Appeals, in giving immediate jurisdiction over unfair labor practices to the federal courts, permits the circumvention of the administrative procedures of the National Labor Relations Board and is in conflict with decisions of federal and state courts all of which assert and recognize the exclusive jurisdiction of the National Labor Relations Board to remedy unfair labor practices.
3. The decision of the Court of Appeals, in holding the seniority provisions here under attack beyond the scope of the normal and usual subjects of collective bargaining contracts, usurps a field reserved to the exclusive jurisdiction of the National Labor Relations Board, namely, to determine the area of lawful collective bargaining between Employers and Unions.
4. The decision of the Court of Appeals is in conflict with those decisions of the National Labor Relations Board which assert an administrative remedy for discrimination by the collective bargaining representative. The decision, therefore, violates the well established doctrine requiring the exhaustion of administrative remedies.
5. The decision of the Court of Appeals, in holding the seniority provisions here under attack to be discriminatory, is in conflict with decisions of the War Labor Board recommending and approving similar seniority provisions.

6. The decision of the Court of Appeals, in holding that the seniority provisions granting all World War II veterans seniority for the period spent in the armed forces are discriminatory and void, so misapplied the case of *Steele v. L. & N. Rd. Co.*, 323 U. S. 192, as to be in conflict with that decision, thus indicating the need for limitation of that case by this court.

7. The decision of the Court of Appeals is in conflict with this court's decision in *Aeronautical Industrial District Lodge 727 v. Campbell*, 337 U. S. 521, and is also in conflict with its own decision in *Britt v. Trailmobile Co.*, 179 F. 2d 569, Cert. denied, 340 U. S. 820, where *Aeronautical Industrial District Lodge v. Campbell*, supra, was properly applied.

8. The decision of the Court of Appeals is in conflict with well established state court decisions dealing with seniority rights, under collective bargaining agreements. In particular, the decision of the Court of Appeals is in conflict with decisions of the Supreme Court of Michigan on the rights of a labor organization with respect to seniority, thus creating a conflict within the Sixth Circuit on this point of law.

9. The decision of the Court of Appeals, if allowed to stand, will have a wide-spread impact on existing industrial relations, affecting rights of hundreds of thousands of veterans and non-veterans, invalidating hundreds of seniority clauses, and requiring the re-arrangement of hundreds of seniority lists.

ARGUMENT

1. The Court of Appeals, in reversing the District Court has decided an important and substantial question of federal statutory interpretation which has not been, but should be settled by this court.

The Court of Appeals, in deciding this case has determined that the federal courts have immediate jurisdiction to decide whether a collective bargaining representative has breached its statutory obligation of non-discriminatory representation under the Labor Management Relations Act, 1947. The exercise of such jurisdiction circumvents the procedures of the National Labor Relations Board, which is the administrative agency charged with the enforcement of that Act. This case is unlike the *Steele* case which arose under the Railway Labor Act and is unlike the decisions involving veterans' rights under the Selective Training and Service Act. The decision of the Court of Appeals represents the first instance in which the question of whether a collective bargaining representative has breached its statutory obligations has been adjudicated *exclusively* on the basis of rights and obligations arising under the Labor Management Relations Act, 1947. Such a determination represents an instance of federal statutory interpretation which should be passed on by this court.

2. The decision of the Court of Appeals, in giving immediate jurisdiction over unfair labor practices to the federal courts, permits the circumvention of the administrative procedures of the National Labor Relations Board and is in conflict with decisions of federal and state courts all of which assert and recognize the exclusive jurisdiction of the National Labor Relations Board to remedy unfair labor practices.

The Court of Appeals in its opinion has asserted that the federal courts have immediate jurisdiction over a union unfair labor practice. This follows from the assertion by the court in its opinion (R. 36) that the failure of the collective bargaining representative to represent the employees fairly and without discrimination violates the rights guaranteed them by Section 7 of the Labor Management Relations Act, 1947. Thus, the court states:

"Section 157, 29 U. S. C. provides that employees have the right to bargain collectively and 'to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.' This means that in entering into labor contracts the bargainners must make their agreements with a view to the rights of the entire group bound by them, and not enter into agreements which discriminate against one part for the benefit of another."

This means that discrimination by the collective bargaining representative is an unfair labor practice within the definition of unfair labor practice as found in Section 8 (b) (29 U. S. C., Section 158), which provides:

"It shall be an unfair labor practice for a labor organization or its agents (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed them in section 7"

The holding of the Court of Appeals must mean that the alleged failure of the defendant labor organization in the instant case to represent employees without discrimination restrains them in the exercise of the rights guaranteed them by Sec. 7 of the Act. (29 U. S. C., Section 157). In effect the court holds the union guilty of an unfair labor practice and thus is usurping the jurisdiction of the National Labor Relations Board. The Labor Management Relations Act, 1947, sets out the administrative procedures designed to remedy and prevent unfair labor practices. Thus, Sec. 107(a) (29 U. S. C., Section 160) provides as follows:

“The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce.”

These procedures have neither been resorted to nor exhausted in the instant case. Numerous decisions have held that these procedures as established by the Act confer upon the National Labor Relations Board exclusive jurisdiction. *California Association v. Building Trades Counsel*, 178 F. 2d 175; *Amazon Cotton Mills Company v. Textile Workers Union*, 167 F. 2d 183 (CA 4); *Amalgamated Association etc. et al., v. Dixie Motor Coach*, 170 F. 2d, 902; *Bakery Drivers Union v. Wagshall*, 333 U. S. 437; *Costaro v. Simons*, 303 N. Y. 318, 98 N. E. 2d, 454; *Wm. P. McNish v. The American Brass Company, et al.*, Supreme Court of Errors of Connecticut, April Term, 1952, 30 L. R. R. M. 2254.

The instant case is in clear conflict with the numerous decisions recognizing the well established doctrine that the National Labor Relations Board has exclusive jurisdiction over unfair labor practices.

3. The decision of the Court of Appeals, in holding the seniority provisions here under attack beyond the scope of the normal and usual subjects of collective bargaining contracts, usurps a field reserved to the exclusive jurisdiction of the National Labor Relations Board, namely, to determine the area of lawful collective bargaining between Employers and Unions.

The Court of Appeals, in its opinion, states as follows:

"All such veterans who subsequent to June 21, 1941, have served a longer time in the armed forces than Huffman and those similarly situated are given a preferential seniority under a contract provision which has no relevance to terms and conditions of work or the normal and usual subjects of contracts between union and employer" (R. 37).

By so holding the Court of Appeals has assumed jurisdiction over an area which under the Labor Management Relations Act, 1947, is reserved to the exclusive jurisdiction of the National Labor Relations Board which has been established as the public authority to make determinations as to what are appropriate subjects for collective bargaining, to be negotiated in contracts between unions and employers. The instant decision is in conflict with this well established administrative and judicial practice, which conflict should be resolved by this court. *Inland Steel Co. v. N. L. R. B.*, 170 F. 2d 247, cert. denied, 336 U. S. 960; *Cross and Co., Inc. v. N. L. R. B.*, 174 F. 2d 875.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1952

No.

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, CIO,
An Unincorporated Voluntary Association,
Petitioner,

vs.

GEORGE HUFFMAN, Individually, and on Behalf
of a Class, etc.,
Respondents

**PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Petitioner, International Union, UAW-CIO, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above-entitled case on March 3, 1952, and that court's denial of the petitions for re-hearing, entered in the above-entitled case on April 15, 1952.

OPINIONS BELOW

The order of the District Court overruling plaintiff's motion for summary judgment and sustaining the defendants' motions for summary judgment (R. 26) is unreported. The opinion of the Court of Appeals (R. 30) is reported in 195 F. 2d 170.

JURISDICTION

The defendants' petitions for re-hearing were denied on April 15, 1952 (R. 69). The jurisdiction of this court is invoked under 28 U. S. C., Section 1254 (1).

QUESTIONS PRESENTED

1. Whether a federal District Court and a United States Court of Appeals have jurisdiction to determine whether a collective bargaining representative by the negotiation of certain seniority provisions has breached its statutory obligation of non-discriminatory representation under the Labor Management Relations Act, 1947, in an action brought without resort to the administrative procedures of the National Labor Relations Board by one of the employees who falls under the group represented by the collective bargaining representative.

2. Whether a seniority system under a collective bargaining agreement which grants seniority credit equal to the length of their war service to World War II veterans with no prior service with the employer is arbitrary and discriminatory and therefore invalid.

STATUTES INVOLVED

The pertinent statutory provisions appear in Appendix A, *infra*.

STATEMENT

Following World War II the defendant collective bargaining representative (petitioner in this proceeding) and the defendant employer entered into successive collective bargaining agreements, the seniority sections of which provided that World War II veterans be accorded seniority credit for the time spent in war service in the armed forces. (The relevant contract provisions appear in the Record at pages 13-22). These provisions were negotiated as part of a comprehensive veterans' readjustment program followed by many labor unions and employers and supported and endorsed by both public and private agencies concerned with veterans' affairs. (See Appendices B, C, and D.)

The plaintiff, Huffman, entered the employ of the company on September 23, 1943, at the employer's "Louisville Works". He was inducted into military service on November 18, 1944, and was discharged from such service on July 1, 1946. Upon timely application he was reemployed by the Ford Motor Company and has continued in its service since (R. 6, 7). He brought this action individually and on behalf of a class on February 21, 1951, alleging that he and the class were unreasonably prejudiced in their seniority standing by the operation of the contract clauses granting seniority credit for time spent in the armed forces to veterans with no prior service with the company (R. 7). He alleged further that these contract clauses impaired his seniority status as preserved for him by the Selective Training and Service Act (50 U. S. C., Section 308) and that they were invalid because they

were outside the scope of the authority of the statutory collective bargaining agent to negotiate (R. 7, 8). Motions for summary judgment were filed by all parties and on May 23, 1951, the District Court sustained the defendants' motions, holding in part:

"* * * The Court * * * is of the opinion that the collective bargaining agreement expresses an honest desire for the protection of the interests of all members of the union and is not a device of hostility to veterans. The Court finds that said collective bargaining agreement sets up a seniority system which the Court deems not to be arbitrary, discriminatory or in any respect unlawful" (R. 26).

Upon plaintiff's appeal the court below reversed the judgment of the District Court. Under authority of *Fishgold v. Sullivan Drydock and Repair Corp.*, 328 U. S. 275, it upheld the District Court's ruling that no right of plaintiff secured under the Selective Training and Service Act of 1940, U. S. C., Section 308, had been violated (R. 33). However, it held the seniority system as applied to Huffman to be discriminatory within the meaning of *Steele v. L. & N. Rd. Co.*, 323 U. S. 192 (R. 37; 38). McAllister, Circuit Judge dissented and stated:

"I am of the opinion that the order of the district court dismissing appellant's petition should be affirmed for the reasons, as therein set forth, that the collective bargaining agreement expressed an honest desire for the protection of the interests of all members of the union; that it was not a device of hostility to veterans; and that the seniority system therein provided was not arbitrary, discriminatory, or unlawful" (R. 38).

The Court below dismissed defendants' petitions for rehearing on April 15, 1952 (R. 69).

SPECIFICATION OF ERRORS TO BE URGED

The United States Court of Appeals for the Sixth Circuit erred:

1. In failing to hold that the District Court and the United States Court of Appeals lacked jurisdiction to determine whether a collective bargaining representative by the negotiation of certain seniority provisions has breached its statutory obligation of non-discriminatory representation under the Labor Management Relations Act, 1947, in an action brought without resort to the administrative procedures of the National Labor Relations Board by one of the employees who falls under the group represented by the collective bargaining representative.
2. In holding that the seniority system granting seniority credit to all World War II veterans equal to the period of their military service is discriminatory as to Huffman and those similarly situated, and not in the interest of the union as a whole.
3. In failing to hold that the seniority system granting seniority credit to all World War II veterans equal to the period of their military service was a lawful and non-discriminatory arrangement which it was appropriate for the defendant Company and Union to negotiate and which represents a fair and reasonable solution of an important social and industrial problem.
4. In reversing the order of the District Court.

4. The decision of the Court of Appeals is in conflict with decisions of the National Labor Relations Board which assert an administrative remedy for discrimination by the collective bargaining representative. The decision therefore violates the well established doctrine requiring the exhaustion of administrative remedies.

The Court of Appeals, in its opinion, relies as authority for its decision on *Steele v. L. & N. Rd. Co.*, 323 U. S. 192. That case arose under the Railway Labor Act, 45 U. S. C., Sections 151-188, and involved *hostile* discrimination based on color by a statutory collective bargaining representative. The instant case arises under the Labor Management Relations Act, 1947. It involves a carefully planned and widely endorsed system of granting special seniority benefits to all veterans of World War II, entailing no hostile discrimination towards anyone. Such a strained application of the *Steele* case suggests that that case is now ripe for limitation by this Court.

This Court's attention is drawn to the fact that the *Steele* case, and other decisions applying its principle, involved collective bargaining representatives deriving their authority (and hence their concomitant obligations) under the Railway Labor Act. That statute, unlike the Labor Management Relations Act, 1947, here involved, provides no administrative remedy to an employee who is discriminated against, thus making a strong case for granting immediate judicial relief, since an employee would otherwise be without any remedy. In contrast, the administrative machinery set out in the Labor Management Relations Act, 1947, provides adequate remedies before the National Labor Relations Board in those instances where the collective bargaining representative has

breached its statutory obligations. As was argued above, the Court below held that an unfair labor practice has been committed by the union. Huffman, therefore, had available the remedy of filing an unfair labor practice before the National Labor Relations Board. Further, the Board, *even in the absence of a finding that a specific unfair labor practice was committed*, has asserted the existence of an administrative remedy to correct discriminatory practices by labor organizations. Thus, it follows that, in contrast to cases arising under the Railway Labor Act, there existed here an administrative remedy which was not but should have been resorted to even if the alleged discrimination here complained of is ~~not~~ a specific unfair labor practice within the meaning of the Act. Thus, the National Labor Relations Board in the case of *RKO Radio Pictures, Inc.*, 61 NLRB 112, in a representation proceeding, held that a certification which it had issued would be rescinded if it were shown that non-discriminatory representation had been denied to any group of employees in the bargaining unit. The Board in that case announced:

"It is with deep concern, therefore, that we note intimations appearing in the record concerning the possibility that the unions may indulge in reprisals designed to prevent persons who have customarily performed both acting and extra work from continuing to do so. It should be emphasized in this regard that it is the duty of the exclusive representative of the employees in an appropriate bargaining unit to represent all employees therein without hostile discrimination and with a view to the promotion of their best interest. (Citations.)

"Should either the Guild or the Independent engage in such restrictive practices or otherwise circumvent the objectives of the Board inherent in this decision, the Board will not regard itself as pre-

cluded, upon consideration of the circumstances thus presented, from taking appropriate remedial action, including either a redetermination of the bargaining unit or revocation of the certification herein."

To the same effect is *Southwestern Portland Cement Company*, 61 NLRB 1217. A similar holding may also be found in the case of *Larus and Bro. Company, Inc.*, 62 NLRB 1075, where the Board stated:

"* * * we have conceived it to be our duty under the statute to see to it that any organization certified under Sec. 9 (c) as the bargaining representative, acted as a genuine representative of all the employees in the unit.

"If it were not for the additional circumstances set forth below we should rescind the AFL certification."

The Board decided this case, which was a representation proceeding, in part on the authority of the *Steele* case and noted specifically that the policies which it was enforcing had *not* been developed administratively under the Railway Labor Act.

The existence of such administrative remedies clearly means that the *Steele* case is inapplicable to actions arising under the Labor Management Relations Act, 1947, in the absence of the exhaustion of these administrative remedies. This court has stated that it is a "long-settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted". *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 58 S. Ct. 459. The instant decision is thus in conflict with this rule and with the decisions of the National Labor Rela-

tions Board asserting the existence of these remedies. This court should take jurisdiction of this case in order to clarify the limitations of the *Steele* case and to resolve the conflict created by the Court of Appeals in its decision.

5. The decision of the Court of Appeals, in holding the seniority provisions here under attack to be discriminatory, is in conflict with decisions of the War Labor Board recommending and approving similar seniority provisions.

The War Labor Board on numerous occasions recommended to unions and employers the incorporation into collective bargaining agreements of seniority provisions relating to veterans similar to those held to be discriminatory by the Court below in the instant case. See *Murray Company, Dallas, Texas*; *United Steel Workers (CIO)*; Case #8-D-381, 14-742; June 5, 1945; Regional War Labor Board 8; *Firestone Tire and Rubber Company, Aircraft Division, Atlanta, Georgia*; *United Auto Workers (CIO)*; Case #111-12560-D; May 15, 1945; Regional War Labor Board 4; *J. H. Williams and Company, Buffalo, N. Y.*; *Office and Personnel Workers (CIO)*; Case #111-12858-D (1659); September 5, 1945; Regional War Labor Board for New York. In the last named case the Board approved the following clause:

"In the case of honorably discharged veterans of World War II who go to work at J. H. Williams without previous employment in the company, such employees after 30 days' trial, shall be credited with seniority equivalent to their time spent in the armed forces of the United States."

The Second Regional Board ordered this same clause in another case, involving the *United Electrical Workers and the Ackerman-Gould Company*; Case #111-15368-D; October 4, 1945. For discussion of these cases, see *Bureau of National Affairs Employment Reporter*, 56:11; 56:18, 56:20.

The negotiation of seniority clauses of the type here under attack therefore represented a policy approved by a branch of the federal government. The Court of Appeals now holds that a labor organization in pursuing this policy has violated its statutory obligations under the Labor Management Relations Act, 1947. This holding has created a conflict which should be resolved by this court.

6. The decision of the Court of Appeals, in holding that the seniority provisions granting all World War II veterans seniority for the period spent in the armed forces are discriminatory and void, so misapplied the case of *Steele v. L. & N. Rd. Co.*, 323 U. S. 192, as to be in conflict with that decision, thus indicating the need for limitation of that case by this Court.

The provisions here under attack, which grant seniority credit to all World War II veterans, are not discriminatory within the meaning of the Court's decision in the *Steele* case and should have been upheld on the authority of *Aeronautical Lodge v. Campbell*, 337 U. S. 521. In the *Steele* case, hostile discrimination against Negroes was held to be unlawful. In the instant case, all World War II veterans are treated alike and Ford employees, whether veteran or non-veteran, equally contributed seniority benefits to veterans not previously employed by Ford. This was done for the benefit of the entire union membership within

the meaning of *Aeronautical Lodge v. Campbell, supra*, in order to avoid conflict between veterans and non-veterans during the postwar period, as well as to assure like treatment of all World War II veterans.

The serious and severe friction and strife which took place between veterans and organized labor after World War I led, early during World War II to the preparation and adoption by labor organizations, veterans organizations and employer associations of a comprehensive program designed to avoid repetition of the unfortunate World War I experiences. See *The Public Reaction to the Returned Service Man After World War I*; U. S. Department of Labor, Bureau of Labor Statistics, Historical Study No. 73, Washington, 1944, p. 23 ff. It was intended that this program be in harmony with and supplemental to the legislative efforts of the Congress to protect employment and seniority rights of World War II veterans. One aspect of this program was particularly designed to benefit veterans who fell beyond the scope of the protection which the Congress saw fit to grant through legislation. This aspect is set out in Paragraph 13 of a publication of the Retraining and Reemployment Administration of the United States Department of Labor entitled *Statement of Employment Principles*, which publication is attached to this petition as Appendix B. Paragraph 13 of that publication provides, as follows:

"Newly hired veterans who have served a probationary period and qualified for employment *should be allowed seniority credit*, at least for purposes of job retention, *equal to time spent in the armed services* plus time spent in recuperation from service-connected injuries or disabilities either through hospitalization or vocational training." (Emphasis added.)

• The wide endorsement of this policy may be observed from the list of organizations represented on the Advisory Committee to the Retraining and Reemployment Administration which includes Railway Labor Executives Association, National Association of Manufacturers, U. S. Chamber of Commerce, U. S. Department of Labor, Business Advisory Counsel to the Secretary of Commerce, American Legion, Disabled American Veterans, Veterans of Foreign Wars, American Federation of Labor and Congress of Industrial Organizations. The wide extent to which this policy was followed in the negotiation of collective bargaining agreements by labor organizations is discussed below.

We submit that the well and widely considered reasons supporting the policy which has been held to be discriminatory and invalid, serve completely to discredit such holding and serve further to illustrate the total inapplicability of the *Steele* case.

The negotiation of the seniority clauses here under attack represents a decision on the part of the defendants to make well deserved provision for all World War II veterans. Consideration for training and qualifications attained while in military service was accorded such veterans. It was decided to treat a veteran without prior service with the company as one whose entry into employment was delayed by military service and to treat the event of his induction into service as equivalent to having hired in at that time. It was assumed that the majority of the beneficiaries of these seniority clauses would probably be youthful volunteers and the clauses represent an effort to avoid penalizing early military service by not letting it operate to defer the accumulation of seniority

which might otherwise have accumulated. This course was adopted even though it afforded some slight prejudice to the few men who, after June 21, 1941, and after the President declared a state of unlimited national emergency, first hired in. The man who voluntarily or otherwise was early in military service was rewarded, and only at the expense of people who in the same period of national emergency headed for the security of a factory and possible deferment from the draft. Furthermore, during World War II, a considerable number of married women and other older persons were hired by employers engaged in war production. It was the belief of the defendants that in the face of the predicted decrease in employment during the immediate postwar period, veterans should be given preference in job security over such persons who in all probability were in smaller actual need of remunerative employment. The seniority clauses here under attack aided in accomplishing that purpose.

These same considerations persuaded Congress to give similar credit for time spent in military service to all World War II veterans who are civilian employees of the United States government. Veterans Preference Act, 5 U. S. C., Sections 851 to 869. The government in its role as an employer of a large number of people thus recognized and adopted prior military service, irrespective of prior employment, as a valid basis for granting employment and job retention rights. The Court of Appeals, on the other hand, denies the validity of this reasoning with respect to private employers and labor organizations and the union is now told that by adopting policies similar to that of the federal government, it has violated its obligations as a statutory collective bargaining representative under the Labor Management Relations Act, 1947.

If this decision is allowed to stand, obligations under one federal statute are inconsistent with the express policy of another federal statute. It penalizes the defendant for having made an honest and effective effort to avert the clashes which took place between workers and ex-service men after World War I.

Further evidence of the well founded and wide-spread approval from all sources of seniority clauses similar to the ones here under attack can be found in a number of War Labor Board cases approving such clauses, and discussed in a preceding section of this petition.

The discrimination involved in the *Steele* case was unlawful because it was unreasonable and hostile in nature. That decision, however, cannot be read to mean that any effort by the union to draw distinctions and classifications among the employees which it represents is unlawful. The *Steele* case, by analogy, imposed constitutional standards of "equal protection" on the union. These constitutional standards require that distinctions and classifications which are drawn have a reasonable foundation in fact. In this connection, the definition of "reasonable" found in the dissenting opinion of Brandeis, J. in *Quaker Cab Company v. Penna.*, 277 U. S. 389, at 406, is of interest:

"The equality clause requires merely that the classifications should be reasonable. We call that action reasonable which an informed, independent, just-minded, civilized man could rationally favor."

Applying these criteria in the instant case it is clear that the union has completely satisfied this standard. Not only does the seniority system here under attack have a rational

foundation in fact, but it seems clear that the solution adopted by the negotiating parties here as well as in numerous other similar situations was the most reasonable treatment conceivable. Under these circumstances, it is fatal for a court to substitute its own judgment for that of the negotiating parties. For the court to do so makes it impossible for a large union, representing hundreds of thousands of workers, to engage in collective bargaining. It is inevitable that such a union must represent groups and classifications with divergent interest which must be reconciled fairly in light of the needs of the entire group.

This court has recognized that seniority systems are by nature discriminatory in many respects. *Aeronautical Industrial Lodge 727 v. Campbell*, 337 U. S. 521. Departmental seniority in many instances may impose hardship on those in other departments in case of layoffs. The worker with greater skill, but lesser seniority, is usually discriminated against. On the other hand, many contracts make provisions for exceptional workers, thus discriminating against those with greater length of service. Seniority systems have been based on the number of dependents a worker has. In that case, one with greater length of service but fewer dependents would be "discriminated" against. Unless seniority is artificially defined in terms of length of service on plant-wide basis, a great variety of systematic and regular methods for operating a seniority system is available to the negotiating parties. All such methods must be sustained by a Court insofar as they are rational and do not evidence hostile or unreasonable discrimination against any group. To prevent the negotiating parties from exercising the widest possible discretion in this field would be to render meaningless the collective bargaining process. We submit that the present decision, if allowed to stand, would have this adverse effect.

The reasons which persuaded the negotiating parties to negotiate the clauses here under attack and which prove those clauses to be for the benefit of the entire union may be summarized as follows:

1. The clauses, by assuring all veterans seniority credit for time spent in the armed forces, prevented conflict between veterans and non-veterans.
2. The clauses, by assuring like treatment for all veterans, prevented conflict among various groups and classifications of veterans.
3. The clauses assured that employers and unions alike would benefit from an influx of youthful ex-servicemen as employees and members.

It follows from these considerations that the seniority system held to be discriminatory by the Court below was a reasonable and fair arrangement of the negotiating parties which should have been sustained.

7. The decision of the Court of Appeals is in conflict with this Court's decision in *Aeronautical Industrial District Lodge 727 v. Campbell*, 337 U. S. 521, and is also in conflict with its own decision in *Britt v. Trailmobile Company*, 179 F. 2d 569, certiorari denied 340 U. S. 820, in which decision *Aeronautical Industrial District Lodge 727 v. Campbell*, *supra*, was properly applied.

This Court has properly recognized the right of a collective bargaining representative to make reasonable seniority arrangements which protect a valid interest of the represented employees and do not evidence hostile discrimination towards any particular group. *Aeronautical District Lodge 727 v. Campbell*, 337 U. S. 521. The United

States Court of Appeals for the Sixth Circuit properly applied the principle of that case in *Britt v. Trailmobile Company*, 179 F.2d 569, in which case the court recognized the power of a collective bargaining representative to make substantial changes in the seniority expectancies of employees within the collective bargaining unit. The Court held at Page 572:

"The appellants, however, contend that the agreement is discriminatory in that the original Trailmobile working force were permitted to date their seniority rights from the date of employment while in Highland men were forced to accept a later date. *Aeronautical Industrial District Lodge 727 v. Campbell*, 337 U. S. 521, 69 S. Ct. 1287, tells us, however, that the date of employment is not, under the Act, an inflexible basis for determining seniority rights; that discrimination in the process of a collective bargaining agreement which is wholly unrelated to a veteran's absence in the service, is not forbidden by the Act, and that it would be an undue restriction on the process of collective bargaining to forbid changes in collective bargaining arrangements whereby veterans, as well as non-veterans; are benefited by promoting greater protection of their rights and smoother operation of labor-management relations. Collective bargaining is a continuous process and a veteran becomes the beneficiary of those gains the achievement of which is the constant thrust of collective bargaining. Collective bargaining agreements are made by a bargaining agent selected by a majority of the working force and are binding upon all employees. One who benefits as the result of such collective agreements must, in the language of the Oakley case, accept not only its advantages but its limitations."

In the above case the Court of Appeals recognized the right of a collective bargaining representative to remove as many as 10 years from the accumulated seniority of certain employees because a merger had taken place between the employer where those employees had been originally employed and a new employer. In the instant case, no employee is deprived of any seniority which he has accumulated and the action of the union merely accords identical preferential treatment to all veterans of World War II.

The court in the instant case, however, refused to follow its own salutary doctrine and attempts to distinguish *Aeronautical Industrial District Lodge 727 v. Campbell, supra*, on the grounds that the instant seniority arrangement was not for the benefit of the union as a whole and therefore constituted improper, though admittedly not hostile, discrimination against one and in favor of another group of veterans. We submit that this distinction is unfounded and that therefore the instant case is in conflict with the *Aeronautical Lodge* case.

We have already indicated that the unfortunate experience of bitter conflict between veterans and organized labor after World War I, was a compelling argument for the making of special provisions to the benefit of all World War II veterans. This was particularly true in the face of the economic recession and consequent lowered employment anticipated at the end of World War II. These facts created considerable pressure from the public and the press for the negotiation of clauses such as are here under attack. Further, to grant special seniority benefits to one group of veterans (as required by the Selective Training and Service Act) but not to another seemed groundless and designed merely to foster dissatisfaction not only between

veterans and non-veterans but between veterans and veterans, as well. Seniority provisions granting the same benefit to all veterans, irrespective of their pre-induction employment, were therefore the logical and reasonable answer to a serious industrial and social problem, well designed to avoid conflict within the entire union and assuring further that employers and unions, alike would benefit from an influx of youthful ex-servicemen.

We have already indicated that Congress saw fit to enact by means of the Veterans Preference Act, 5 U. S. C., Sections 851-869, and presumably for the same valid reasons, similar provisions for the benefit of all World War II veterans seeking employment or reemployment in the federal civil service. The defendants are now told by the Court of Appeals that this eminently reasonable system of benefiting all who served their country in the armed forces during World War II, because it operates in its details to some slight prejudice of one group, is discriminatory and invalid.

We respectfully, but urgently, submit that such a holding not only violates important and applicable prior holdings, but violates reason and common sense as well. The wide-spread impact of this erroneous decision on well established industrial and social relationships should persuade this court to take jurisdiction over this case.

8. The decision of the Court of Appeals is in conflict with well established state court decisions dealing with seniority rights under collective bargaining agreements. In particular, the decision of the Court of Appeals is in conflict with decisions of the Supreme Court of Michigan on the rights of a labor organization with respect to seniority, thus creating a conflict within the Sixth Circuit on this point of law.

Numerous decisions of the highest courts of several states have recognized that the negotiating parties in industrial relations must be given the widest possible discretion in order that collective bargaining may function smoothly and without undue restriction. These decisions hold that if the Union's action in connection with seniority arrangements is reasonable, and not arbitrary and capricious the courts should not substitute their judgment for that of the negotiating parties. Thus, it was held in *Hartley v. Brotherhood, etc.*, 283 Mich. 201, 277 N. W. 885 (1938) that it was proper in view of economic conditions to reduce drastically the seniority rights of married women, thus making certain that those who needed employment most, would hold it longest. The Court in upholding the action of the Union said:

“This agreement was executed for the benefit of all the members of the brotherhood and not for the individual benefit of the plaintiff. When by reason of changed economic circumstances, it became apparent that the earlier agreement should be modified in the general interest of all members of the brotherhood it was within the power of the latter to do so, notwithstanding the result thereof to plaintiff

“A different situation might be presented had the agreement of 1932 been accomplished as a result of

bad faith, arbitrary action or fraud directed at plaintiff on the part of those responsible for its execution."

To the same effect is *Capra v. Local Lodge*, 76 P. 2d 739; where it was held that "in the absence of fraud or caprice, courts cannot interfere." See also *Shaup v. Grand International Brotherhood, etc.* 135 S. 327; *Ryan v. New York Central Railroad*, 255 N. W. 365; *Aden v. L. & N. R. R.*, 276 S. W. 511; *Donovan v. Travers*, 285 Mass. 167, 188 N. E. 705; *Yazoo v. Mitchell*, 173 Miss. 594; *Burton v. Oregon-Washington R. R.*, 148 Ore. 648, 38 P. 2d 72. These decisions, and particularly, the Michigan decisions, were recently followed by the Supreme Court of Michigan in the case of *Lester Mayo, et al. v. Great Lakes Greyhound Lines, et al.*, 333 Mich. 205 (decided April 7, 1952).

These decisions are in harmony with the standard established and followed in *Steele v. L. & N. Railroad Company*, 323 U. S. 192; *Aeronautical Lodge v. Campbell*, 337 U. S. 521; and *Britt v. Trailmobile Company*, 179 F. 2d 569. We have already shown that the Court below in the instant case fails to apply the standards so established. It follows that the decision of the Court below is also in conflict with a large number of state court decisions governing collective bargaining conduct in relation to seniority provisions. This is particularly true with respect to the decisions of the Supreme Court of Michigan cited above, which decisions are in direct conflict with the instant decision of the Court of Appeals for the Sixth Circuit, of which Circuit Michigan is a part. The decision of the Court below, if allowed to stand, would thus result in wide-spread confusion as to the rights and power of

negotiating parties in industrial relations and has created doubt in an important phase of the law of labor relations which this Court should remove.

9. The decision of the Court of Appeals, if allowed to stand, will have a wide-spread impact on existing industrial relations, affecting rights of hundreds of thousands of veterans and non-veterans, invalidating hundreds of seniority clauses, and requiring the re-arrangement of hundreds of seniority lists.

Statistical information in this field is necessarily incomplete. Nevertheless, the data which is available and some of which is set out in Appendix C, *infra*, indicates that the seniority clauses under attack in the instant litigation were negotiated pursuant to a widely established and well considered practice. Thus, it appears from research conducted by the Bureau of Labor Statistics, the results of which research are reported in Appendix C, that over one hundred collective bargaining agreements covering over two hundred thousand workers, contained clauses similar to the ones held invalid by the court below. In addition, the UAW-CIO alone negotiated in the neighborhood of three hundred seniority clauses of the type here under attack, with employers such as: Ford Motor Company, Kaiser Frazer Corporation, Packard Motor Car Company, Hudson Motor Car Company, Chrysler Corporation, Bendix Aviation Corporation, Electric Auto-Lite Company and many others. These contracts involve in the neighborhood of five hundred thousand employees of whom approximately one-third are World War II veterans. The UAW-CIO negotiated these clauses pursuant to action at the International Convention of the Union held in 1944, after carefully considering the legality of such

clauses and in view of overwhelming and nation-wide support of such clauses (see Appendices B and D). It is thus perfectly clear that the instant decision affects seniority rights of hundreds of thousands of workers, will require the rearrangement of hundreds of seniority lists, and creates great potential liability among employers and unions alike. Litigation of a similar type is already pending in the United States District Court for the Northern District of Ohio, Western Division, in Civil Action No. 6767, against the Electric Auto-Lite Company and the UAW-CIO. That action is brought on behalf of a class numbering approximately five hundred and alleges damages in excess of \$1,000,000.00. It may be presumed that in view of the large number of seniority clauses similar to the ones held invalid by the court below, further litigation of a similar type threatens. These facts, while by no means exhaustive of the situation, should serve to illustrate that the decision below affects a great number of other litigants, both real and potential, in similar situations. It is submitted that in view of that fact and in the light of the considerations presented in the preceding sections of this petition, this vital question should be decided by the Supreme Court of the United States.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Detroit 14, Michigan.

SOL GOODMAN,

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Of Counsel.

July 9, 1952.

APPENDIX A

Pertinent Statutory Provisions

VETERANS PREFERENCE ACT, 5 U. S. C., Section 852 and Section 853:

"852. Examinations; earned ratings; additional credit

In all examinations to determine the qualifications of applicants for entrance into the service ten points shall be added to the earned ratings of those persons included under Section 851 (1), (2), (3), and (5) of this title, and five points shall be added to the earned ratings of those persons included under section 851 (4) of this title; *Provided*, That in examinations for the positions of guards, elevator operators, messengers and custodians competition shall be restricted to persons entitled to preference under this chapter as long as persons entitled to preference are available and during the present war and for a period of five years following the termination of the present war as proclaimed by the President or by a concurrent resolution of the Congress for such other positions as may from time to time be determined by the President. As amended Dec. 27, 1950, c. 1151, 2(a), 64 Stat. 1117."

"853. Credit for experience

In examinations where experience is an element of qualification, time spent in the military or naval service of the United States shall be credited in a veteran's rating where his or her actual employment in a similar vocation to that for which he or she is examined was interrupted by such military or naval service. In all examinations to determine the qualifications of a veteran applicant, credit shall be given for all valuable experience, including exper-

ience gained in religious, civic, welfare, service, and organizational activities, regardless of whether any compensation was received therefor. June 27, 1944, c. 287, 4, 58 Stat. 388."

LABOR MANAGEMENT RELATIONS ACT, 1947, U. S. C., Section 157, Section 158 (b) (1) and Section 160 (a)

"157. Right of employees as to organization, collective bargaining, etc:

Employees shall have the right to self-organization to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a)(3) of this title. As amended June 23, 1947, 3:17 p.m. E.D.T. c. 120, Title I, 101, 61 Stat. 140."

"158. Unfair labor practices

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (a) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances."

"160. Preventing of unfair labor practices—Powers of Board generally :

(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been, or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this subchapter or has received a construction inconsistent therewith."

U. S. Department of Labor

**RETRAINING AND
REEMPLOYMENT ADMINISTRATION**

Federal Trade Commission Building
Washington 25, D. C.

**STATEMENT OF
EMPLOYMENT PRINCIPLES**

Introductory Remarks

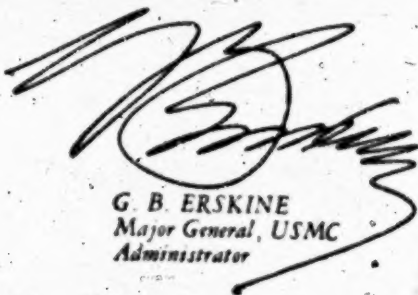
On VJ-day over twelve million persons were in the Armed Forces of the United States. These men and women had been drawn from every walk of life throughout our Nation. In addition, untold millions were employed either directly or indirectly in the production of the implements of war. Many of these workers had shifted to new industries, or new occupations because of the economic distortions produced by war. The united effort of these groups produced the shattering power which culminated in victories on the European and African Fronts and in the Pacific Islands.

With the termination of hostilities and the resulting demobilization of the Armed Forces and the forces of wartime production, one of the Nation's major problems became the reintegration of our veterans and others whose lives had been disrupted by the war effort into the community and national life. The responsibility for effecting this reintegration lies with Government, management, labor, and every other factor of the national economy, including the displaced workers and the veterans, individually and through their several organizations.

To assist in this process of reintegration, to minimize the competitive disadvantage which is inherent in long-term absence from civilian employment, and to help veterans and other displaced workers to obtain and hold suitable jobs commensurate with their abilities, the employment principles appearing in this brochure are offered for the guidance of Government, management, labor, and every other factor of the national economy.

These principles have been prepared by this Administration after consultation with an Advisory Committee consisting of representatives of labor, management, and veterans' organizations. The membership of this Committee is as follows: American Federation of Labor—Robert Watt, Frank P. Fenton, Boris Shiskin; Congress of Industrial Organizations—Ted F. Silvey and Meyer Bernstein; Railway Labor Executives' Association—A. E. Lyon and E. L. Doyle; Business Advisory Council to the Secretary of Commerce—Cyrus C. Ching and Walter White; National Association of Manufacturers—A. E. Whitehill and John M. Convery; U. S. Chamber of Commerce—T. W. Howard; American Legion—Ralph H. Lavers and Elbert Burns; Disabled American Veterans—Millard W. Rice; Veterans of Foreign Wars—Omar B. Ketchum.

In commenting on these principles, Secretary of Labor Lewis B. Schwellenbach stated that he wholeheartedly endorses the concepts underlying them and expresses the hope that they will be of real assistance to management and labor in all of their discussions.



G. B. ERSKINE
Major General, USMC
Administrator

October 7, 1946.

General Principles Applicable to All

1. All workers should be employed on jobs commensurate with their skills and capacities. Wartime skills, training, and experience of veterans* and workers should always be evaluated in connection with all job opportunities.

*The term "veteran" as used herein means any person who served in the Armed Forces on or after September 16, 1940, and prior to the termination of the present war, and who shall have been discharged or released therefrom under conditions other than dishonorable.

2. Qualification for the job and performance on the job should be key standards for selection and retention of workers. Sex, race, creed, color, or physical impairment should not be factors in the selection or retention of workers or in the amount of compensation paid.

3. Entrance into training of a sufficient number of trainees or learners should be promoted in order that the number of journeymen in the apprenticeable trades and the number of other skilled workers will, within a period of 5 years or less, be at least sufficient to meet current industrial demands. Qualified physically handicapped individuals should be included in apprentice training programs.

4. All positions should be evaluated from the standpoint of minimum physical requirements in order that the physically handicapped may be fully utilized. In addition, appropriate mechanical devices should be installed and special training should be conducted to assist handicapped workers in adjusting and advancing in their jobs.

5. A program of business guidance should be undertaken at the community level in cooperation with Federal, State, and local agencies for the benefit of all persons who are interested in promoting small businesses.

6. The employer and labor group concerned should assume prime responsibility for the proper placement of each employee who cannot continue with his usual or regular work, because of injury or disease suffered while on the job.

7. All unemployed, both veterans and others who participated in the war effort, should actively participate in the search for suitable employment and thereby become contributing factors in the national peacetime economy.

Principles Applicable Only to Veterans.

8. All veterans having reemployment rights under Federal statutes should be accorded these statutory rights as a minimum.

9. When recruiting in excess of lay-off commitments, employers, with due regard to collective bargaining or other formal agreements should give preference to qualified veterans.

10. Employers should promote and establish in-plant training programs for the benefit of reemployed veterans in order that these workers may assume their places at the competitive level of employees having the same seniority who received promotions while the veterans were serving in the Armed Forces.

11. Related training and experience received by veterans while in the armed services should be accredited toward shortening the apprenticeable periods.

12. Upon their return to work, veterans should be allowed seniority credit and participation in related benefits offered by employers equal to their previous tenure of employment plus time spent in the armed services and in recuperation from service-connected injuries or disabilities either through hospitalization or vocational training.

13. Newly hired veterans who have served a probationary period and qualified for employment should be allowed seniority credit, at least for purposes of job retention, equal to time spent in the armed services plus time spent in recuperation from service-connected injuries or disabilities either through hospitalization or vocational training.

14. Leaves of absence should be granted to veterans having reemployment rights who apply for reinstatement within the statutory period but who wish to take advantage of the educational or vocational rehabilitation features of any Federal or State enactment for training connected with any jobs in their employer's organization. Such leaves of absence should not jeopardize veterans' statutory rights.

15. Physically handicapped veterans should be given the highest employment priorities to jobs within their physical capacities and abilities. Where necessary, employment policies and union agreements should be revised to allow for this priority.

U. S. DEPARTMENT OF LABOR

BUREAU OF LABOR STATISTICS

WASHINGTON 25, D. C.

(Appendix C)

June 30, 1952

In reply, please
refer to No. 500

Mr. Harold E. Cranefield
General Counsel
United Automobile Workers (CIO)
8000 East Jefferson Avenue
Detroit 14, Michigan

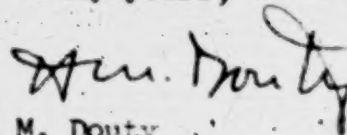
Dear Mr. Cranefield:

In compliance with your request, we have reviewed a substantial number of collective bargaining agreements most of which were in effect in 1947. Among these agreements were 102 providing seniority for veterans not previously employed. Employment figures were available for 99 of these agreements covering 229,550 workers.

We are attaching copies of examples of the kinds of clauses found in these agreements as well as a list of the 102 agreements. The agreements are arranged by company on an industry basis. Some of these clauses were renewed in superseding contracts.

I hope that this information will be useful to you. If we can be helpful in some other way, please do not hesitate to call upon us.

Very truly yours,



H. M. Douty

Chief, Division of Wages and
Industrial Relations

Enclosures - 2

APPENDIX C (continued)

AGREEMENTS WITH CLAUSES PROVIDING SENIORITY FOR VETERANS NOT PREVIOUSLY EMPLOYED

TEXTILE MILL PRODUCTS

Company	Location	Number of Employees
1. American Thread Co.	Willimantic, Connecticut	1,500
2. American Thread Co.	Easthampton, Massachusetts	300
3. American Thread Co.	Holyoke, Massachusetts	282
4. Amoskeag-Lawrence Mills, Inc.	Manchester, New Hampshire	297
5. Balata, Victor, and Textile Belting Co.	Northampton, Pennsylvania	185
6. Bates Manufacturing Co.	Augusta, Maine	1,450
7. Bates Manufacturing Co.	Lewiston, Maine	2,000
8. Bates Manufacturing Co.	Saco, Maine	1,500
9. Berkshire Fine Spinning Asso- ciates, Inc.	Adams, Massachusetts	2,300
10. Berkshire Fine Spinning Asso- ciates, Inc.	Albion, Rhode Island	575
11. Berkshire Fine Spinning Asso- ciates, Inc.	Anthony, Rhode Island	475
12. Blumenthal, Sidney, and Co.	Shelton, Connecticut	730
13. Branch River Wool Combing Co., Inc.	North Smithfield, Rhode Island	550
14. Burlington Mills, Inc.	Burlington, Wisconsin	225
15. Chandler Oil Cloth and Buck- ram Co., Inc.	East Taunton, Massachusetts	80
16. Cluett, Peabody and Co., Inc.	North Grosvenor-Dale, Connecticut	917
17. Continental Mills	Lewiston, Maine	1,350
18. Crown Manufacturing Co.	South Attleboro, Massachusetts	650
19. Crown Manufacturing Co.	Pawtucket, Rhode Island	700
20. Erwin Cotton Mills Co.	Durham, North Carolina	1,980
21. Erwin Cotton Mills Co.	Erwin, North Carolina	2,280
22. Fall River Textile Mfgs. Assn. and New Bedford Cotton Mfgs. Assn.	New Bedford, Massachusetts	30,000
23. Fitchburg Yarn Co.	Fitchburg, Massachusetts	575
24. Forstmann Woolen Co.	Intrastate—New Jersey	3,364
25. Goodyear Clearwater Mills	Rockmart, Georgia	1,650
26. High Rock Knitting Co.	Philmont, New York	200

APPENDIX C (continued)

AGREEMENTS WITH CLAUSES PROVIDING SENIORITY FOR VETERANS NOT PREVIOUSLY EMPLOYED

TEXTILE MILL PRODUCTS (Continued)

Company	Location	Number of Employees
27. Hudson Worsted Co.	Hudson, Massachusetts	600
28. Maplewood Yarn Mills, Inc.	Fall River, Massachusetts	315
29. Maverick Mills	East Boston, Massachusetts	750
30. Nashua Manufacturing Co. (Nashua Division)	Nashua, New Hampshire	
31. Nashua Manufacturing Co. (Jackson and Nashua Mills)	Nashua, New Hampshire	4,100
32. Naumkeag Steam Cotton Co.	Salem, Massachusetts	1,512
33. Pepperell Manufacturing Co.	Biddeford, Maine	1,500
34. Pepperell Manufacturing Co.	Lewiston, Maine	1,264
35. Powdrell and Alexander, Inc.	Danielson, Connecticut	1,200
36. Putnam Mills Corp.	Putnam, Connecticut	260
37. Raycrest Mills, Inc.	Pawtucket, Rhode Island	600
38. Stehli and Co., Inc.	Lancaster, Pennsylvania	375
39. Taunton Coating Mills, Inc.	Taunton, Massachusetts	100
40. Taunton Wool Stock Co.	Taunton, Massachusetts	28
41. Textile Thread Co.	Watertown, Massachusetts	84
42. United States Rubber Co.	New Bedford, Massachusetts	800
43. Verney Taunton Mills, Inc.	East Taunton, Massachusetts	300
44. Westover Fabrics, Inc.	West Warwick, Rhode Island	54
45. Erwin Cotton Mills	Cooleemee, North Carolina	

Agreements No. 25 and 27 are with the United Textile Workers (AFL). The remaining 43 agreements are with Textile Workers Union (CIO).

APPENDIX C (continued)

AGREEMENTS WITH CLAUSES PROVIDING SENIORITY FOR VETERANS NOT PREVIOUSLY EMPLOYED

FURNITURE AND FIXTURES

Company	Location	Number of Employees
1. Simmons Company	Kenosha, Wisconsin ¹	3,500
2. Statton Furniture Mfg. Co.	Hagerstown, Maryland ²	133

TOBACCO MANUFACTURERS

1. Export Leaf Tobacco Co.	Winston-Salem, North Carolina ³	470
2. Export Leaf Tobacco Co.	Richmond, Virginia ³	418

MISCELLANEOUS MANUFACTURING

1. Conn, C. G., Ltd.	Elkhart, Indiana ⁴	1,000
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STONE, CLAY AND GLASS PRODUCTS

1. Asbestos Mfg. Co.	Huntington, Indiana ⁴	350
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SERVICES

1. Amalgamated Bank of New York	New York, New York ⁵	61
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¹ Agreement with Federal Labor Union (AFL).

² Agreement with Furniture Workers (CIO).

³ Agreement with Food, Tobacco and Agricultural Workers, affiliated with CIO in 1947.

⁴ Agreement with United Automobile Workers (CIO).

⁵ Agreement with Office and Professional Workers, affiliated with CIO in 1947.

APPENDIX C (continued)

AGREEMENTS WITH CLAUSES PROVIDING SENIORITY FOR VETERANS NOT PREVIOUSLY EMPLOYED

PRIMARY METAL INDUSTRIES

Company	Location	Number of Employees
1. American Zinc & Chemical Co.	Langeloth, Pennsylvania ¹	825
2. Bohn Aluminum & Brass Corp.	Detroit, Michigan ²	800
3. Bohn Aluminum & Brass Corp.*	Detroit, Michigan ²	1,500
4. Buffalo Bolt Co.	North Tonawanda, New York ³	1,081
5. Campbell, Wyant & Cannon Foundry Co.	Muskegon, Michigan ²	2,508
6. Campbell, Wyant & Cannon Foundry Co.*	South Haven, Michigan ²	250
7. Lebanon Steel Foundry	Lebanon, Pennsylvania ⁴	500

* Different Locals.

¹ Agreement with Mine, Mill & Smelter Workers, affiliated with CIO in 1947.

² Agreement with United Automobile Workers (CIO).

³ Agreement with United Electrical Workers, affiliated with CIO in 1947.

⁴ Agreement with Steelworkers (CIO).

APPENDIX C (continued)

AGREEMENTS WITH CLAUSES PROVIDING SENIORITY FOR VETERANS NOT PREVIOUSLY EMPLOYED

FABRICATED METAL PRODUCTS

(Except Ordnance, Machinery, and Transportation Equipment)

Company	Location	Number of Employees
1. American Hardware Co.	New Britain, Connecticut ¹	3,000
2. Bassick Company	Bridgeport, Connecticut ¹	1,100
3. Benjamin Electric Mfg. Co.	Des Plaines, Illinois ¹	475
4. City Auto Stamping Co.	Toledo, Ohio ²	489
5. Sargent & Co.	New Haven, Connecticut ¹	1,600
6. United Stove Co.	Ypsilanti, Michigan ²	750
7. Wood, John Mfg. Co.	Chicago, Illinois ¹	128
8. Young, L. A. Spring & Wire Corp.	Detroit, Michigan ²	700
9. Young, L. A. Spring & Wire Corp.*	Detroit, Michigan ²	2,400

* Different Local:

¹ Agreement with United Electrical Workers, affiliated with CIO in 1947.

² Agreement with United Automobile Workers (CIO).

APPENDIX C (continued)

AGREEMENTS WITH CLAUSES PROVIDING SENIORITY FOR VETERANS NOT PREVIOUSLY EMPLOYED

ELECTRICAL MACHINERY, EQUIPMENT, AND SUPPLIES

Company	Location	Number of Employees
1. B-L Electric Manufacturing Co.	St. Louis, Missouri ¹	13
2. Colonial Radio Corp.	Buffalo, New York ¹	1,600
3. The Dunmore Co.	Racine, Wisconsin ²	125
4. Electric Auto-Lite Co.	Toledo, Ohio ²	4,500
5. Electric Voice, Inc.	South Bend, Indiana ¹	—
6. Electrical Controller & Mfg. Co.	Cleveland, Ohio ¹	325
7. Emerson Electric Mfg. Co.	St. Louis, Missouri ¹	3,500
8. Essex Wire Corp.	Fort Wayne, Indiana ¹	398
9. Landers, Frary & Clark	New Britain, Connecticut ¹	3,080
10. The Magnavox Co.	Fort Wayne, Indiana ¹	1,600
11. Packard Manufacturing Co.	Indianapolis, Indiana ³	650
12. Picker X-Ray Corp.	Cleveland, Ohio ¹	450
13. The Singer Manufacturing Co.	South Bend, Indiana ¹	1,556
14. Ward Leonard Electric Co.	Mt. Vernon, New York ¹	700

¹ Agreement with United Electrical Workers, affiliated with CIO in 1947.

² Agreement with United Automobile Workers (CIO).

³ Agreement with Steelworkers (CIO).

APPENDIX C (continued)

AGREEMENTS WITH CLAUSES PROVIDING SENIORITY FOR VETERANS NOT PREVIOUSLY EMPLOYED

MACHINERY (EXCEPT ELECTRICAL)

Company	Location	Number of Employees
1. Acmeline Manufacturing Co.	Traverse City, Michigan ¹	80
2. Allis-Chalmers Manufacturing Co.	West Allis, Wisconsin ¹	16,000
3. American Blower Corp.	Detroit, Michigan ¹	955
4. E. W. Bliss Co.	Toledo, Ohio ¹	700
5. Joy Manufacturing Co.	Michigan City, Indiana ¹	425
6. Micromatic Hone Corp.	Detroit, Michigan ¹	300
7. Minneapolis-Moline Power Implement Co.	Intrastate—Minnesota ²	150
8. Regina Corp.	Rahway, New Jersey ²	117
9. Saco-Lowell Shops	Intrastate—Maine ³	2,744
10. W. W. Sly Manufacturing Co.	Cleveland, Ohio ²	142

¹ Agreement with United Automobile Workers (CIO).

² Agreement with United Electrical Workers, affiliated with CIO in 1947.

³ Agreement with Textile Workers Union (CIO).

APPENDIX C (continued)

AGREEMENTS WITH CLAUSES PROVIDING SENIORITY FOR VETERANS NOT PREVIOUSLY EMPLOYED

TRANSPORTATION EQUIPMENT

Company	Location	Number of Employees
1. American Locomotive Co.	Schenectady, New York ¹	5,000
2. Bell Aircraft Corp.	Intrastate—New York ²	900
3. Bendix Aviation Corp.	Interstate ²	2,500
4. Chrysler Corp.	Interstate ²	65,000
5. Houdaille-Hershey Corp.	Interstate ²	430
6. Hudson Motor Car Co.	Detroit, Michigan ²	14,255
7. Hudson Motor Car Co.*	Detroit, Michigan ²	150
8. McCord Corp.	Plymouth, Indiana ²	280
9. North American Aviation, Inc.	Interstate ²	6,641
10. Schult Corp.	Elkhart, Indiana ²	289

* Covers Office Employees.

¹ Agreement with Steelworkers (CIO).

² Agreement with United Automobile Workers (CIO).

APPENDIX C (continued)

CLAUSES PROVIDING FOR SENIORITY FOR VETERANS NOT PREVIOUSLY EMPLOYED

SECTION 13—MILITARY SERVICE

A. During any period of Selective Service, . . .

B. A new employee war veteran employed by the Employer within six (6) months of his discharge from the Service, who has not in this six (6) month period worked elsewhere, and who has completed his trial period with the Employer as defined in Section 3-B, shall be entitled to additional seniority to the extent of one (1) year; provided that his length of service in the Armed Forces was over one (1) year. If his length of service in the Armed Forces was less than one (1) year, he shall receive seniority credit after his trial period equal to his length of service in the Armed Forces. This clause shall not apply to veterans who re-enlist.

CLAUSES PROVIDING FOR SENIORITY FOR VETERANS NOT PREVIOUSLY EMPLOYED

NEW EMPLOYEES WITH MILITARY SERVICE

New employees who subsequent to May 1, 1940, during the life of, and who are subject to the Selective Training and Service Act of 1940, have performed training or service in the land or naval forces or the merchant marines of the United States or its allies and who are employed by the Company within one year of the date of their honorable discharge but have no seniority rights in this or any

APPENDIX C (continued)

other company, shall be entitled to the following special privileges unless they have received such privileges from another company:

- (a) After completion of six months' employment, they shall be granted additional seniority, equivalent to the length of such service.

CLAUSES PROVIDING FOR SENIORITY FOR VETERANS NOT PREVIOUSLY EMPLOYED

ARTICLE VII—SENIORITY

Section 8. . . .

Veterans of World War II who were not formerly employed by the Company and who entered the service after May 1, 1940, shall, when employed by the Company, have seniority with the Company equivalent to their period of service in the armed forces, provided that they are employed by the Company within six (6) months within the date of their discharge and provided further they have not worked for another company for more than ninety (90) continuous days and provided further they have not exercised this privilege with any other company. In cases of mental or physical incapacity the six (6) months time limit may be extended. The Company will inform the Union Bargaining Committee of the names of employees to whom seniority is granted under this paragraph. During the first sixty (60) days of work with the Company, they shall be considered probationary employees.

After they have finished the probationary period they shall be entered on the seniority list of their division and shall rank for seniority from the day they entered the service.

As with veterans who were formerly employed by the Company, non- * * * Company veterans must, before they are hired, furnish certificates of satisfactory completion of service and be qualified for the job.

CLAUSES PROVIDING FOR SENIORITY FOR VETERANS NOT PREVIOUSLY EMPLOYED

EXHIBIT "C"

VETERANS' AGREEMENT

3. Any veteran of the present war who was not employed by any person or company at the time of his entry into the service of the land or naval forces or the merchant marine of the United States and who is hired by the Company after he is relieved from training and service in the land or naval forces or after completion of service in the merchant marine shall, upon having been employed for the probationary period for all new employees in this contract, and not before, receive seniority credit for the period of such service subsequent to May 1, 1940 provided:

- (a) Such veteran shall apply for and obtain such employment within 12 months from the time he is relieved from such training and service; it being agreed that if such veteran is unable to work by reason of disability during said period of 12

months, his application may be made within ninety (90) days from the time his disability has ended.

- (b) Such veteran shall not have previously exercised this right in any plant of this or any other company.
- (c) Such veteran shall not be employed for the purpose of bringing about the displacement of another worker.
- (d) A veteran so employed shall submit his service discharge papers to the Company at the end of aforesaid probationary period of employment and the Company shall place thereon in permanent form a statement showing that the veteran has exercised this right, such statement to be signed by representatives of the Company and the Union.
- (e) A veteran who has not worked for the Company before his induction will not be permitted to "bump" a veteran who has, except that he may "bump" those veterans who were hired in by the Company after he was.

CLAUSES PROVIDING FOR SENIORITY FOR VETERANS NOT PREVIOUSLY EMPLOYED

11. *Service in U. S. Armed Forces*

* * * If the Employer hires a returned serviceman who has not previously worked for the Bank, he shall be credited with time spent in the armed forces since September 1, 1940, in computing his seniority in case of lay-offs or promotions, provided, however, that the serviceman shall apply for employment within one (1) year after his discharge from service.

CLAUSES PROVIDING FOR SENIORITY FOR VETERANS NOT PREVIOUSLY EMPLOYED

ARTICLE IX—DRAFTEES

3. Any veteran of World War II who was not in the employ of the Company at the time of his entry into the military service of our country and who is employed by the Company within six months after the date of his honorable discharge from Military service shall be granted the following benefits;

(a) After he has been in the continuous employ of the company for one year, for the calculation of vacation, he will be credited with length of service equal to his military service after September 1, 1940.

(b) After he has been in the continuous employ of the Company for six (6) months, for purposes of layoff and recall, he shall be credited with length of service equal to

his military service after September 1, 1940, with a maximum seniority credit of one year.

CLAUSES PROVIDING FOR SENIORITY FOR VETERANS NOT PREVIOUSLY EMPLOYED

ARTICLE XV

EMPLOYMENT AND SENIORITY OF VETERANS

A. EMPLOYEE VETERANS . . .

B. DISABLED EMPLOYEE-VETERANS . . .

C. NON-EMPLOYEE VETERANS

Any veteran of the present war (1) who was not employed by any person or company for a period of ninety (90) days or more immediately preceding his entry into military service, or (2) who, although employed elsewhere than by the Employer within the above specified period, has acquired physical handicaps in military service, is hired by the Employer herein after he is relieved from military service, and not dishonorably discharged, shall, upon having been employed for the probationary period for all new-employees as prescribed in this Agreement, receive seniority credit for the period of such military service subsequent to May 1, 1940; provided, however, (a) such non-employee veteran shall have been hired within ninety (90) days from the time he is relieved from military service or, if such veteran is unable to work by reason of physical disability during said period of ninety (90) days, is hired within ninety (90) days from the time his disability shall have ended; and (b) such non-employee veteran shall not be employed for the purpose of bringing about the displacement of another employee.

The provisions of Section C of this Article XV shall apply only to those non-employee veterans hired by the Employer on or after August 15, 1946.

APPENDIX D

RESOLUTION ON VETERANS

Adopted by National CIO Convention, November 22, 1944

WHEREAS, the unity between our fighting men and the working men and women of the production lines who make up the CIO has been built and maintained through our common war effort.

This unity is forged in our common stake in victory over Axis oppression and is born of the fact that workers and fighters in this war are of the same roots in the American people.

Despite malicious attempts to divide the American people on the home front from their sons and brothers on the fighting fronts, this unity has not been broken.

In addition, it must be recalled that 1,500,000 members of the CIO are today serving in the armed forces, using the weapons and supplies produced by their fellow CIO members at home.

The interests of veterans returning from the fighting fronts are identical with those of workers at home, and can only be served through the carrying out of the program of jobs for all and security that has been outlined by the CIO.

This program of jobs and security can only be guaranteed to veterans through the continued existence and strength of industrial unions, which offer them a protection that goes beyond the present provisions of law and a protection that is assured through the operation of collective bargaining contracts; now, therefore, be it

RESOLVED, that (1) the CIO shall continue to press its program for full production, full employment and security for all and assure means of furthering the welfare of workers and veterans and all the people of the United States.

(2) The CIO recommends to its affiliated unions to provide in their collective bargaining agreements that veterans who are employed for the first time in their plants be accorded cumulative seniority rights for the time spent in service since September 1, 1940; the date of the passage of the Selective Service Act.

(3) The CIO and its affiliated unions shall of course continue their present practice of waiving any requirement of initiation fees from those veterans who upon returning to employment desire to become members of our unions.

(4) The CIO and its affiliated unions will protect the accrued seniority of veterans who upon their discharge from the service seek to return to their jobs. In this way the veteran will be entitled to his job on the basis of cumulative seniority including the period in the service. However, we deplore the action of certain administrative officials who have promoted the illusion among veterans that their way of securing jobs is through displacing workers with longer seniority. The application of any such practice would only create a conflict between the veterans of this war and veterans of the last war or between veterans and other workers who were deferred not because of their own request but in the interest of the war effort.

(5) The CIO urges all its affiliated unions to establish committees on a local and national basis to aid veterans in securing jobs, in obtaining the benefits to which they are entitled under various legislative enactments, and in securing all needed aid in retraining, rehabilitation, and other

measures to promote a secure and easy return to civilian life.

(6) The CIO calls upon the administrative agency charged with the responsibility of interpreting the G. I. Bill of Rights to do so liberally so that every returning serviceman and woman can easily obtain education, financial and employment opportunity, and pledges its support behind all needed changes in existing legislation designed to aid veterans.

(7) The CIO pledges to continue to work with established organizations of veterans to further these and all other aims of mutual benefit to veterans and to the people of the United States.

SUPREME COURT, U.S.

Office - Supreme Court, U.S.

FILED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 194

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, CIO, ETC.,
Petitioner,**

vs.

**GEORGE HUFFMAN, Individually, and on Behalf
of a Class, Etc., et al.,
Respondents**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT**

BRIEF FOR THE PETITIONER

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I. The seniority provisions in question were clearly in the interest of the union as a whole because they served successfully to reintegrate all veterans in the civilian economy after World War II and thus avoided repetition of the bitter conflict between veterans and organized labor which took place after World War I due to the failure of organized labor at that time to make provision for the restoration of veterans to civilian and industrial life 14-20

II. The seniority provisions here under attack were reasonable, and therefore within the authority of the statutory collective bargaining representative to negotiate because: (a) In granting seniority credit to all veterans for time spent in military service, these clauses made certain that no veteran would lose or be denied seniority credit because he performed military service; (b) The clauses made certain that all veterans would be treated as if they had never been required to leave civilian life, thus *preventing* rather than causing discrimination *based on military*

service; (c) The clauses enabled unions and employers to procure a young and competent membership and employment force by attracting veterans whose very youth at the time of entering military service precluded previous employment experience. 21-32

III. The theory and philosophy of collective bargaining in a free economy, as expressed by Congress in the Labor Management Relations Act, 1947, requires that the discretion of the collective bargaining representative as to what are "relevant" factors for purposes of classifying represented employees in contract negotiations be upheld unless the exercise of such discretion gives evidence of hostility or malice towards a particular group, is illegal, or in violation of public policy. . . . 32-40

IV. A great variety of seniority systems (or employment security arrangements) is available to the negotiating parties in collective bargaining, and all such systems, insofar as they are reasonable and not against public policy, should be and generally have been sustained under judicial review. 41-47

V. Application of the doctrine requiring exhaustion of administrative remedies requires that the respondent should have resorted to the administrative processes of the National Labor Relations Board before seeking judicial relief against the petitioner. 47-51

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1952

—◆—
No. 194
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**INTERNATIONAL UNION, UNITED° AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, CIO, ETC.,**

Petitioner,

vs.

**GEORGE HUFFMAN, Individually, and on Behalf
of a Class, Etc., et al.,**
Respondents

—◆—
ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT
—◆—

BRIEF FOR THE PETITIONER
—◆—

OPINIONS BELOW

The order of the District Court overruling plaintiff's motion for summary judgment and sustaining the defendants' motion for summary judgment (R. 26) is unreported. The majority opinion of the Court of Appeals reversing the District Court and the dissenting opinion of Judge McAllister (R. 30-38) are reported in 195 F. 2d 170.

JURISDICTION

The judgment of the Court of Appeals was entered on March 3, 1952 (R. 29) and its opinion was filed on the same date (R. 30). The defendants filed timely petitions for rehearing, which were denied on April 15, 1952 (R. 69). On October 13, 1952, this Court entered an order granting the petitions for writ of certiorari in this case (No. 194) and its companion case (No. 193). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether a seniority system in a collective bargaining agreement between an employer and a labor union, as collective bargaining agent pursuant to the Labor Management Relations Act, 1947, is discriminatory and invalid because it grants seniority credit equal to the length of their military service to World War II veterans with no prior service with the employer as well as to veterans who had worked for the employer before entering military service.
2. Whether a federal District Court and a United States Court of Appeals have jurisdiction to determine whether a statutory collective bargaining representative, by the negotiation of certain seniority provisions, has breached its duty of non-discriminatory representation under the Labor Management Relations Act, 1947, in an action brought without prior resort to the administrative procedures of the National Labor Relations Board by one of the employees in the group represented by the collective bargaining representative.

STATUTES INVOLVED

The pertinent statutory provisions appear in Appendix A, *infra*.

STATEMENT

Following the end of World War II, the UAW-CIO (petitioner herein), as statutory collective bargaining representative of the defendant Ford Motor Company's employees (including plaintiff-respondent Huffman), and the defendant employer entered into successive collective bargaining agreements, the seniority clauses of which provided that World War II veterans be accorded seniority credit for the time spent in military service in the armed forces. (The relevant contract provisions appear in the Record at pages 13-22). These provisions were negotiated as part of a comprehensive veterans' readjustment and integration program receiving public and private endorsement on a nationwide basis. Three collective bargaining agreements are involved. The first, executed on July 30, 1946 by the petitioner and the Ford Motor Company, contained the following provision (R. 14, 15; R. 12):

"(c) Any veteran of World War II who was not employed by any person or company at the time of his entry into the service of the land or naval forces or the Merchant Marine and who is a citizen of the United States and served with the allies and who has been honorably discharged from such training and service in the land or naval forces or after completion of service in the Merchant Marine shall, upon having been employed for six (6) months and not before, receive seniority credit for the period of such service subsequent to June 21, 1941"

“(d) It is further understood and agreed that, regardless of any of the foregoing, all veterans in the employee (sic) of the company at the time the Contract is thus amended shall receive seniority credit for their period of service, subsequent to June 22, 1941 in the land or naval forces or Merchant Marine of the United States or its allies, upon completion of their probationary period.”

The same provisions were included in a subsequent agreement, negotiated by the same parties and dated August 21, 1947 (R. 17-18; R. 12). A third agreement, dated September 26, 1949, deleted the above clauses but preserved to all veterans then employed by Ford, the seniority credits established in the 1946 and 1947 agreements (R. 21, R. 12-13).

The plaintiff-respondent Huffman entered the employ of the company on September 23, 1943 at the employer's "Louisville Works". He was inducted into military service on November 18, 1944 and was discharged from such service on July 1, 1946. Upon timely application he was reemployed by the Ford Motor Company and has continued in its service since that time (R. 67). *Upon re-employment he was immediately credited with the seniority he would have had if he had never left Ford's employment* (R. 7). In other words, he was given seniority credit for the time spent in military service, and such time was treated as if during it he had worked for Ford. This was done pursuant to the mandate of the Selective Training and Service Act (50 U. S. C. 308) and the contract clause discussed above. He is a member of the International Union, United Automobile, Aircraft and Agricultural Implements Workers of America, CIO, the petitioner herein (R. 3).

The respondent Huffman brought this action individually and on behalf of approximately 275 other persons employed.

by Ford at the "Louisville Works" on February 21, 1951, against Ford and petitioner. He sought a declaratory judgment of the invalidity of the provisions of the collective bargaining agreements between Ford and the petitioner relating to the seniority rights of World War II veterans. He alleged that he and the other employees on whose behalf the suit was brought were unreasonably prejudiced in their seniority standings by the operation of the contract clauses granting seniority credit for time spent in the Armed Forces to veterans with *no* prior service with the company. The operation of this clause, it was alleged, caused them to be in positions on the seniority roster lower than those to which their hiring dates would otherwise have entitled them (R. 5-7). Plaintiff and the class whom he represents are alleged to have been laid off or furloughed at times and for periods when, except for such provision, they would not have been laid off or furloughed (R. 7). The class, as defined in the complaint, is not limited to veterans employed by Ford prior to their military service. Rather, it is defined to include *all* employees whose seniority standing, as determined by their hiring date, is adversely affected by veterans not previously employed whose seniority standing is determined by their date of entry into military service (R. 7). The Court below, however, held that only Huffman and similarly situated *veterans* were discriminated against (R. 38).

Huffman further alleged that the contract clauses in question impaired his seniority status as preserved for him by the Selective Training and Service Act (50 U. S. C. 308) and that they were invalid because they were beyond the authority of the statutory collective bargaining agent to negotiate and to contract (R. 7, 8).

Motions for summary judgment were filed by all parties and on May 23, 1951 the District Court sustained the defendants' motion, holding in part:

... the Court ... is of the opinion that the collective bargaining agreement expresses an honest desire for the protection of the interests of all members of the union and is not a device of hostility to veterans. The Court finds that said collective bargaining agreement sets up a seniority system which the Court deems not to be arbitrary, discriminatory or in any respect unlawful" (R. 26).

Upon plaintiff's appeal, the Court of Appeals reversed the judgment of the District Court. Under authority of *Fishgold v. Sullivan Drydock and Repair Corp.*, 328 U. S. 275, 66 S. Ct. 1105, the majority opinion upheld the District Court, in part, holding that no rights secured by the Selective Training and Service Act of 1940, 54 Stat. 885, 50 U. S. C. 301, to veterans previously employed by Ford had been violated by the clauses in question (R. 33). However, the majority held the clauses invalid as to Huffman and those veterans similarly situated (R. 38) because "veterans with longer periods of military service but shorter periods of employment with Ford are favored above Huffman and his class" and veterans not employed at the time they entered military service "were given seniority credits for their period of armed service after June 21, 1941" (R. 32) the same as veterans who had prior to military service been employed by Ford. The Court of Appeals held that length of military service "has no relevance to terms and condition of work or the normal and usual subjects of contracts between union and employer" (R. 37). For this reason the Court held that the seniority system as applied to Huffman was discriminatory within the meaning of *Steele v. L. & N. Rd. Co.*, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173 (R. 37, 38) and violated Section 7 of the National Labor Relations Act (61 Stat. 140, 29 U. S. C. 157) which requires that the parties to labor contracts "must make their agreements with a view to the rights of

the entire group bound by them, and not enter into agreements which discriminate against one part for the benefit of another" (R. 36).

The Court of Appeals has in effect held that veterans of World War II, not previously employed, cannot, as a matter of law, be given seniority credit for time spent in military service (although such credit is accorded to Huffman and other previously employed veterans) because such a seniority system is not in the interest of the entire membership of the union, but is, rather, unlawful discrimination on behalf of one group of employees against another.

Judge McAllister dissented from the majority opinion on the following grounds:

"I am of the opinion that the order of the district court dismissing appellant's petition should be affirmed for the reasons, as therein set forth, that the collective bargaining agreement expressed an honest desire for the protection of the interests of all members of the union; that it was not a device of hostility to veterans; and that the seniority system therein provided was not arbitrary, discriminatory, or unlawful" (R. 38).

The Court below dismissed defendants' petition for rehearing on April 15, 1952 (R. 69), and this Court granted petitions for writ of certiorari on October 13, 1952.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that the seniority system granting seniority credit to all World War II veterans, whether or not previously employed by Ford, equal to the period of their military service, was invalid and discriminatory as to Huffman and those similarly situated despite the absence of any malice or hostility.

2. In failing to hold that the seniority system granting seniority credit to all World War II veterans, whether or not previously employed by Ford, equal to the period of their military service was:

(a) negotiated by the petitioner in the interest of the entire union membership;

(b) a lawful, non-discriminatory, and reasonable solution of an important social, economic and industrial problem;

(c) based on relevant differences which the statutory collective bargaining representative (petitioner herein) was authorized to consider in its negotiations;

(d) a normal and usual subject of collective bargaining with respect to which the union had authority to negotiate.

3. In failing to hold that the District Court and the United States Court of Appeals lacked jurisdiction to determine whether a statutory collective bargaining representative has, by the negotiation of certain seniority provisions, breached its duty of non-discriminatory representation under the Labor Management Relations Act, 1947, in

an action brought by one of the affected employees without prior resort to the administrative procedures of the National Labor Relations Board.

4. In reversing the order and judgment of the District Court.

SUMMARY OF ARGUMENT

I. The seniority provisions under attack in the instant case were designed to prevent World War II veterans with no prior employment by Ford from being at a disadvantage, seniority-wise, in relation to employees who first hired in at Ford during World War II and after the entry into military service of such veterans. These clauses thereby prevented wide-spread dissatisfaction among veterans who would otherwise have felt that their absence due to military service was causing them to be at a serious disadvantage in industrial employment upon their return to civilian life. The failure of labor unions to make similar arrangements for returning veterans after World War I caused such veterans to be deeply resentful of non-veteran civilians and labor unions and was a major cause in the extensive and often violent conflicts which took place between veterans and organized labor after World War I. Insofar as the negotiation of the clauses here under attack prevented the repetition of this unfortunate experience, the negotiation of these seniority provisions was clearly in the interest of the union as a whole. This Court, in the case of *Aeronautical District Lodge, 727 v. Campbell*, 337 U. S. 521, 69 S. Ct. 1287, ruled that if seniority provisions are in the interest of all the members of the represented group of employees and are not a method of hostile discrimination against any particular group, such seniority provisions are properly negotiated. We submit that the rule of that case should be controlling in the instant case.

II. The standards employed by this Court in the case of *Steele v. L. & N. Rd. Co.*, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173, in reviewing the action of labor unions were analogous to those the Court uses in reviewing the action of legislative bodies. Thus, a statutory collective bargaining representative, in classifying employees within the represented group, must act reasonably and in accordance with principles of due process and equal protection as established in the 14th Amendment. The Court in the *Steele* case held that racial discrimination was based on irrelevant factors and was therefore unreasonable and improper. In the instant case, however, the seniority system under attack was a means of securing equality of opportunity for employment to veterans absent due to military service and therefore prevented rather than caused discrimination. The seniority system made certain that no veteran would be at a disadvantage in industrial life *because* of his military service.

III. The public policy declared by Congress in the Labor Management Relations Act, 1947, favors free collective bargaining. The effectuation of such a policy requires that the collective bargaining representative have the widest possible discretion in negotiating the terms of employment, subject only to the minimum degree of judicial review and intervention necessary to the protection of employee rights secured by the constitution or by statute and to resolve possible conflicts with other public policies equal in importance to the policy promulgated and protected by the Act. Unless the union's action is unreasonable, arbitrary, in bad faith or in violation of statute or public policy, a reviewing court should not substitute its judgment for that of the negotiating parties as to what is a wise labor contract. Any other result would undermine the scheme of free collective bargaining envisioned by Congress and would, in fact, make such bargaining impossible.

Furthermore, it was within the legitimate authority of the collective bargaining representative to take account of those social and economic considerations which gave rise to the seniority provisions here under attack. Such factors as an employee's experience, family status and need for employment have often been considered by labor unions as relevant factors in collective bargaining. World War II veterans represented the nation's ablest young men and it was proper to seek to attract them into industrial employment and union membership. Their need for employment in many instances was greater than that of civilians who had gone to work during the war: The Court of Appeals erred in holding that such factors were irrelevant and beyond the scope of authority of the collective bargaining representative to consider in negotiations.

IV. Seniority systems often are not directly or exclusively based on actual work experience with a particular employer. A great variety of seniority systems is available to negotiating parties in collective bargaining. All of these, insofar as they are reasonable, even though they may adversely affect a small or large number of employees, must be sustained on judicial review. The seniority of respondent Huffman is also based, in part, on time spent in military service rather than actual employment at Ford. He thus benefits from the very type of seniority credit of which he complains. Furthermore, the Court of Appeals misconstrued the operation of the seniority clause when it held that only veterans in Huffman's class were adversely affected. Actually, non-veterans who hired in after the date of entry into military service of a veteran not previously employed at Ford would also feel the adverse impact of the agreement. The Court of Appeals held that the clauses in question are discriminatory (and therefore invalid) because they give preference in seniority to employees with

less actual working experience. However, the clause can also work in favor of a veteran, who, like Huffman, had prior employment with the company. (See p. 42, *infra*). Such a veteran may have had *less actual work experience* than a veteran not employed prior to his military service and nevertheless, may outrank the latter in seniority, notwithstanding that the latter has the benefit of the clause under attack. In fact, this may be true as between two veterans neither of whom were employed by Ford before entering military service. Thus, the clause differentiates as between members of the very class that the respondent employees claim it favors. This means that the clause does not discriminate in favor of veterans as against non-veterans, or in favor of one class of veterans as against another. What the clause does, reasonably and uniformly, is to give all veterans credit for time they spent in the armed forces.

Adopting the respondent's position would make it impossible to negotiate the large variety of seniority arrangements now in existence which make employment retention rights contingent on such factors as skill, education, family status, experience in the industry, etc. Unless a seniority system is unreasonable or shows evidence of hostile discrimination courts should not substitute their judgment for that of the negotiating parties.

V. The Court of Appeals in its opinion held that by agreeing to the clauses in question the union violated rights guaranteed to the employees in Section 7 of the National Labor Relations Act, as amended (29 U. S. C. 157). By so holding, the Court of Appeals has in effect usurped the exclusive jurisdiction of the National Labor Relations Board to remedy and prevent unfair labor practices within the meaning of the National Labor Relations Act as amended. That Act provides that it is an unfair labor

practice for a labor organization to restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

Even if the decision of the Court of Appeals is not regarded as equivalent to a holding that the union's agreement was a specific unfair labor practice (we respectfully suggest that the opinion below is not altogether clear in this connection), the Court erred, nevertheless, in holding that it (and the District Court) had jurisdiction to decide this case. This follows from the fact that, whether or not the alleged discrimination committed by the union is an unfair labor practice, the National Labor Relations Board has established an administrative remedy for the correction of wrongs to employees flowing from a union's failure to represent them for purposes of collective bargaining without discrimination. The existence of such administrative remedies makes inapplicable the case of *Steele v. L. & N. Rd. Co.*, *supra*, and cases following it, for this Court specifically found in those cases that plaintiffs had no administrative remedy available to them. The decision of the Court of Appeals thus violates the doctrine which precludes judicial relief prior to the exhaustion of available administrative remedies. It was error for the Court of Appeals to fail to direct the respondent to seek relief before the National Labor Relations Board.

ARGUMENT

I.

The seniority provisions in question were clearly in the interest of the union as a whole because they served successfully to reintegrate all veterans in the civilian economy after World War II and thus avoided repetition of the bitter conflict between veterans and organized labor which took place after World War I due to the failure of organized labor at that time to make provision for the restoration of veterans to civilian and industrial life.

This Court had occasion in the case of *Aeronautical Industrial Dist. Lodge 728 v. Campbell*, 337 U. S. 521, 69 S. Ct. 1287, to pass on a problem substantially similar to that presented by the instant case. In that case the Court had to rule on the question whether World War II veterans were unlawfully deprived of their statutory right to reemployment by a seniority clause in a collective bargaining agreement which gave seniority preference to certain union officials, irrespective of their hiring date, over all other employees. It was held that layoffs of World War II veterans caused by these seniority provisions did not violate the reemployment rights of such veterans because the negotiation of these clauses by the collective bargaining representative followed common practice among labor unions and was not arbitrary or discriminatory. The Court found as particularly persuasive the fact that the provisions in question were in the interest of all the members of the represented group of employees.

It is submitted that the reasoning in the *Aeronautical Industrial Lodge* case should persuade this Court that the provisions under attack in the instant case should also be upheld on similar grounds. (It should be noted at this point

that the Court of Appeals was persuaded and held in the instant case that no rights under the Selective Training and Service Act of 1940, 54 Stat. 885, 50 U. S. C. 301, of Huffman and other World War II veterans with prior employment at Ford's had been violated but that the clauses were improper because they were unreasonably discriminatory and not in the interest of the union as a whole and therefore violated the Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C. 141.)

The effect of the provisions here in question was as follows:

Veterans with service at Ford Motor Company before military service received seniority credit for the time actually spent at Ford as well as for the time spent in military service. Their original hiring date thus determined their seniority standing even though their actual service at Ford was interrupted by a period of military service of varying duration. Veterans who first went to work at the Ford Motor Company after military service received similar seniority credit for the time spent in military service. Their standing on the seniority roster is therefore determined by their date of entry into or duration of military service. The operation of the clause thus assured the veteran with no prior employment at Ford that his seniority standing would not be prejudiced in favor of one who went to work at Ford on a date later than the veteran's entry into military service. In other words, early entry into military service was rewarded, and only at the expense of those who subsequent to that time and after the President had declared an unlimited national emergency, first hired in. We shall argue at length below that such provisions were clearly reasonable. In addition, however, it is our contention that the negotiation of these provisions represented a vital interest of the entire union, indeed of the

entire labor movement, because only by the negotiation of such provisions could World War II veterans be assured of some degree of employment security after World War II. In the absence of these provisions the following situation would have arisen: World War II veterans with no prior employment at Ford (or elsewhere) after commencing work at Ford would have been outranked in seniority by all those employees who commenced their industrial employment during the war. They would have been outranked in seniority by a large number of employees with no military service. It would not have been unreasonable for such veterans to feel that military service was the cause for their delay in entering industrial employment and that they were being penalized by virtue of having been in military service. It would not have been unnatural for such veterans to resent deeply the seniority preference granted to employees who were engaged in industrial employment while they were in the Armed Forces, to resent deeply the seniority system which placed them under this handicap, and to resent bitterly the labor organization which negotiated and enforced such a seniority system. The recession of economic activity and consequent lowered employment which was anticipated after World War II was an important additional source of such possible resentment.

Petitioner herein, and organized labor in general, feared the consequences of the situation described above. The experiences of organized labor in the United States after World War I are ample evidence of the fact that these fears were not unjustified. Headlines such as "Ex-soldiers break strike on taxi cabs" were typical of the type of situation prevailing after World War I. It was a common practice to use ex-soldiers as armed guards and strike breakers and discharged servicemen frequently sought to

¹ Seattle Union Record, March 15, 1918.

take the jobs of other workers who were on strike.² Serious problems arose in connection with women who had been employed during the war and who after the war occupied jobs needed and sought by ex-servicemen. Situations arose in which ex-servicemen were pitted against each other. In Seattle, for instance, two recently discharged soldiers were refused re-instatement by their employer unless they tore up their union cards. When the veterans refused to quit the union or give up their claims to the jobs, the employer hired two non-union ex-servicemen, whereupon the union called a strike in which ex-soldiers openly scabbed while wearing chevrons to indicate their veteran status.³

Neither government nor management and labor were prepared for the problems of readjustment to a civilian

² The following observations are made by Clarence M. Weiner in an unpublished Ph. D. thesis entitled: *Organized Labor and Veterans, Problems and Policies in the Re-Employment of Veterans under the Selective Service Act of 1940* (Madison July 1948, on file at University of Wisconsin), at page 2:

"Widely scattered areas experienced violence and disorder as recently discharged servicemen of World War I sought to take the jobs of other workers on strike. In the spring of 1919 New England was being scoured for ex-soldiers to act as strike-breakers in Worcester, Mass. In New York City nearly a thousand ex-servicemen had replaced 'alien strikers' in a number of shoe factories. In Toledo, Cleveland, Chicago, Butte, Seattle, Tacoma and other places there were serious incidents in which veterans and non-veterans found themselves battling over jobs."

Mr. Weiner also notes at page 5:

"During World War II there were again deep-seated antagonisms and tensions between servicemen and non-veteran workers. 'We may as well face it, the antagonism is there,' Labor Secretary Schwollenbach said in 1945. 'Unless it is solved it is going to be used to the detriment of collective bargaining and of the Nation. (Washington D. C. Star., July 22, 1945.)'"

See also R. S. Jones, *A History of the American Legion*, Chapter XIII and XIV (New York 1946); *Proceedings of the National Conference of Social Work*, (1919) page 392; *Senate Reports*, 67th Congress First Session, Volume 1, Senate Report No. 37.

³ Mary Frost Jessup, *The Public Reaction to the Returned Service Man After World War I*. (U. S. Dept. of Labor, Bureau of Labor Statistics, Historical Study No. 73), page 36.

economy.⁴ The efforts of veterans, often violent in form, to secure jobs held by non-veterans were not surprising in light of the high level of unemployment which followed World War I.⁵ Among the unemployed the number of veterans was particularly large because they had lost considerable time in the race for job tenure due to their military service. For a detailed analysis of this entire problem, see Mary Frost Jessup, *The Public Reaction to the Returned Serviceman After World War I*. (United States Department of Labor, Bureau of Statistics, Historical Study #73, Washington, 1944), pages 16-17, pages 23-24. The author at page 40 concludes as follows:

"Even more important is the obvious lack of an effective overall re-employment policy involving the

* In contrast to the World War I experience, the Retraining and Re-employment Administration of the Department of Labor, after consultation with the Business Advisory Counsel to the Secretary of Commerce, the National Association of Manufacturers, the Railway Labor Executives Association, the American Legion, the Disabled American Veterans, the Veterans of Foreign Wars, the American Federation of Labor and the Congress of Industrial Organizations, in an effort to assist in the process of reintegration, to minimize the competitive disadvantage apparent in long term absence from civilian employment and to help veterans obtain and hold suitable jobs, published a statement of principles for the guidance of government, management and labor (R. 58-59). Among the principles enumerated and endorsed by Secretary of Labor Schwollenbach in his *Statement of Employment Principles* (Oct. 7, 1946), was the following:

"(13) * * * *Newly hired veterans who have served a probationary period and qualified for employment should be allowed seniority credit, at least for purposes of job retention, equal to time spent in the armed services plus time spent in recuperation from service connected injuries or disabilities either through hospitalization or vocational training.*" (Italics supplied.)

⁵ See M. James, *A History of the American Legion*, page 239 ff. (New York 1923); National Bureau of Economic Research, *Business Cycles and Unemployment*, pages 58 and 59 (New York 1923); *The 19th Century and After*, Volume 88, page 670 (1920); F. Maurice, *The Employment of Ex-Servicemen*, Literary Digest, Volume 73, pages 40-46 (April 22, 1922); *The Independent*, Volume 98, page 481 (1919).

cooperation of labor, management, and government in all parts of the country and in communities of varying size that attended demobilization after World War I."

Mr. Weiner in *Organized Labor and Veterans*, cited in Footnote 2, observes as follows at page 24:

"The World War I experience greatly influenced developments during and after World War II. The earlier failure to plan for the postwar period resulted in economic dislocation and unemployment that coincided with demobilization. The failure to provide veterans with reemployment rights and other readjustment aids threw veterans of World War I into job competition with other workers and resulted in violence and strikebreaking by ex-servicemen. In the decade following the Armistice the open shop 'American Plan' resulted in the loss by organized labor of a considerable part of its wartime gains. By the beginning of World War II however, organized labor had achieved much greater power, prestige and influence. It was able to pursue with considerable success, policies and programs designed to avoid the bitter experience that followed World War I."

The reemployment rights granted to veterans in the Selective Training and Service Act, 54 Stat. 890, 50 U. S. C. 308, made certain that no veteran who left a job to go into military service would lose seniority credit already accumulated or would lose seniority credit he would have accumulated had he not left for military service. This, however, did not protect in any way the large number of veterans with no previous work experience. Mere reemployment rights therefore would have left a large number of dissatisfied and possibly unemployed veterans in much the same position as most veterans after World War I. These veterans would have found themselves, *because they had been*

in military service, at the disadvantage, seniority-wise, already discussed. The dangerous potentialities to the petitioner and the labor movement in general of such an important and dissatisfied group were such that it was necessary for the petitioner to negotiate the clauses here under attack for the benefit of veterans not previously employed, quite apart from the fact that such provisions, as we shall show below, were a fair and reasonable solution of a difficult industrial problem.

For the respondent Huffman to argue and for the Court of Appeals to hold that the clauses in question are not for the benefit of the entire union is therefore unrealistic and ignores some of the elemental facts in the history of the American labor movement. The petitioner's program for the readjustment of veterans after World War II, of which the provisions here under attack were an integral part, aside from being based on sound and patriotic motives, served to avert what may have endangered the very existence of the petitioner, and certainly served to avert serious industrial strife and unrest. It cannot reasonably be argued therefore that these provisions, because in their immediate application they benefited a particular group, were not in the interest of the union as a whole. For that reason a main segment of respondent's argument and a major basis for the Court of Appeals' decision must fail. This Court in *Aeronautical District Lodge 727 v. Campbell*, 337 U. S. 521, 527-529, 69 S. Ct. 1287, 1290, 1291 has held that seniority provisions, although favoring some particular group, are valid if in the interest of the entire group represented by the union. It is submitted that such reasoning should apply to the seniority provisions involved herein and that these provisions are valid because they are in the interest of the union as a whole.

II.

The seniority provisions here under attack were reasonable, and therefore within the authority of the statutory collective bargaining representative to negotiate, because:

(a) In granting seniority credit to all veterans for time spent in military service these clauses made certain that no veteran would lose or be denied seniority credit because he performed military service;

(b) The clauses made certain that all veterans would be treated as if they had never been required to leave civilian life, thus preventing rather than causing discrimination based on military service.

(c) The clauses enabled unions and employers to procure a young and competent membership and employment force by attracting veterans whose very youth at the time of entering military service precluded previous employment experience.

The Court of Appeals held the seniority clauses here under attack to be discriminatory within the meaning of the case of *Steele v. L. & N. Rd. Co.*, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173. In that case a seniority system had been established which systematically discriminated against a certain group of employees because they were Negroes. This Court held that such discrimination violated the obligation of the union, as the exclusive collective bargaining representative under the Railway Labor Act, 48 Stat. 1185; 45 U. S. C. 151-188, to represent fairly all employees in the collective bargaining unit. The Court found that the discrimination there involved was both "hostile" and not based on "differences relevant to the authorized purposes of the contract".⁶ However, this Court recognized in the

⁶ Other decisions, also arising under the Railway Labor Act and following the *Steele* case are: *Graham v. Brotherhood of Locomotive Firemen and Enginemen*, 338 U. S. 232, 239; 70 S. Ct. 14, 18; *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*, 323 U. S. 210, 65 S. Ct. 235; *Brotherhood v. Howard*, 343 U. S. 768, 72 S. Ct. 1022.

Steele case that unions, in the negotiation of collective bargaining agreements, must make classifications and draw distinctions within the represented group of employees and limited its holding to *hostile* discrimination and *irrelevant* classifications such as would be involved in racial discrimination. It cannot follow from this decision, contrary to the respondent's insistence, that classifications which are neither hostile nor unreasonable amount to illegal discrimination.

It should be noted in this connection that the Court of Appeals uses the word "discriminate" as though, in all cases, discrimination is evil. This is not so, either in law or in common usage. *Webster's International Dictionary*, Second Edition, says to discriminate means:

"To serve to distinguish; to mark as different, to differentiate.

"To separate (like things) one from another in comprehension or use by discerning minute differences.

"To make a distinction; to distinguish accurately; as to discriminate between fact and fancy; also to use discernment.

"To make a difference in treatment or favor (of one as compared with others); as to discriminate in favor of one's friends; to discriminate against a special class."

The Court of Appeals seems to assume that discriminating inherently involves differentiating improperly. "Discriminate" alone is ambiguous. Unless we know the grounds of the discrimination, we cannot judge whether it is proper or improper. Differentiating in good faith, not in a way that the law forbids or in a way that interferes with inherent rights, is not improper. There is no question here of good faith. Nor can it be argued that the petitioner's

action here was either unreasonable or based on facts which the union had no authority to consider in drawing distinctions or making classifications among the represented group of employees. The *Steele* case and cases following it appear, by analogy, to have imposed the standards of the 14th Amendment as those by which to test the validity of collective bargaining provisions. We read the *Steele* case and the cases cited therein as showing that the test which this Court had in mind as to whether or not particular action of a statutory collective bargaining representative was proper is, in substance, the same test which is applied to the action of legislatures. Thus it was observed by the Court at 323 U. S. 202, 65 S. Ct. 226:

"We think that the Railway Labor Act imposes upon the statutory representative of a craft at least as exacting a duty to protect equally the interests of the members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates. Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents, cf. *J. I. Case Co. v. National Labor Relations Board*, *supra*, 321 U. S. 335, 64 S. Ct. 579, but has also imposed on the representative a corresponding duty."

Of interest also are the cases cited in support of the proposition that discrimination by the union based on irrelevant differences such as differences in race is illegal. The Court on the one hand cites a number of decisions in which it had held that statutory discriminations based on reasonable differences are not a denial of equal protection of the laws, and, on the other hand cites decisions in which it

Carmichael v. Southern Coal and Coke Co., 301 U. S. 495, 57 S. Ct. 868; *State of Washington v. Superior Court*, 289 U. S. 361, 53 S. Ct. 624; *Metropolitan Casualty Ins. Co. v. Brownell*, 294 U. S. 580, 55 S. Ct. 538.

was held that statutory or administrative discrimination based on race is not founded on a reasonable or relevant difference and is therefore an unconstitutional denial of equal protection or due process.* It must be concluded from this analysis that this Court in the *Steele* case intended that the action of statutory collective bargaining representatives be judged by substantially the same standards employed in judicial view of the action of legislative bodies. Cf. *J. I. Case Co. v. National Labor Relations Board*, 321 U. S. 332, 64 S. Ct. 576. The same conclusion is reached in a Note at 65 Harvard Law Review 490 entitled *Duty of Union to Minority Groups in the Bargaining Unit*. It is there stated:

"The collective agreement that emerges from management-union negotiations is a jointly promulgated set of principles governing the industrial life of the employees in the bargaining unit. It alone establishes the terms and conditions of employment for union and non-union employees, majority and minority groups alike. Thus the labor contract resembles legislation rather than the traditional private contract."

Speaking of the finality which courts often accord to a labor agreement the Note goes on to say:

"* * * such finality would not be objectionable if on review the courts would extend the *Steele* doctrine into non-racial situations to test the classifications on the theory that the Equal Protection Clause applies to safeguard minority interests generally; or more conservatively that it is the criterion against which the discrimination is to be judged.

* *Yick Wo v. Hopkins*, 118 U. S. 356, 6 S. Ct. 1064; *Yu Cong Eng v. Trinidad*, 271 U. S. 500, 46 S. Ct. 619; *State of Missouri ex rel. Gaines v. Canada*, 305 U. S. 337, 59 S. Ct. 232; *Hill v. Texas*, 316 U. S. 400, 62 S. Ct. 1159.

"Thus, the constitutional analogies should preclude the union from legislating to deprive the individual of existing rights growing out of the employment relation, in much the same fashion as a political unit would be prevented from confiscating property without compensation. But when the collective agreement modifies expectancies grounded in prior contracts, such as seniority rights, no such rigid prescription seems necessary. The constitutional criteria would here require that solution of economic problems be reasonable, entailing a weighing of the majority interests to be served against the individual expectancies upset. The majority representative should be accorded a wider range of discretion where the agreement looks solely to the future, since such legislation does not interfere with present expectancies. The only requirement in this case which the constitutional standards demand is that a rational solution to the industrial problem be found. Implicit in the latter two cases is a need to consider the alternatives open to the union, the difficulty of resolving the problem, industrial practices which have been adopted in the past to deal with similar situations, and the result which will best promote sound industrial relations."

Commenting on the case of *Britt v. Trailmobile Company*, 179 F. 2d 569 (C. A. 6), cert. denied, 340 U. S. 820, 71 S. Ct. 52, where the Court of Appeals upheld the right of a collective bargaining representative to remove as many as 10 years from the accumulated seniority of certain employees following a merger of two corporations and the combination of their working forces, the Note states:

"The 10 to 1 ratio of the Trailer employees to Highland employees suggests that the line of least resistance and least strife was the one chosen. Although the solution was not the most reasonable, and in some instances where the same problem has arisen integration of seniorities has been achieved, the re-

sult was at least rational. No more than this is required of economic legislation under the Equal Protection Clause."⁹

The Note concludes:

"* * * where explicit labor policies are not involved, but rather questions of industrial adaptation, the union should be able to function with a fairly free hand * * *. The type of review which the courts have been accustomed to apply to legislation should give the best result."

For an application of these standards, see *Jennings v. Jennings*, Ohio Ct. App. (1949) 91 N. E. 2d 899; 24 Lab. Rel. Ref. Man. 2242 and *Hess v. Trailer Co. of America*, 17 Ohio Supp. 39, 31 Ohio Op. 566 (C. P. 1944), affirmed, 31 Ohio Law Rep. 51, 18 Ohio Bar 314 (1945).

In testing the validity of the petitioner's action in the instant case we may thus look to standards applied by this Court in the review of legislation. This standard was summarized by Justice Stone in the case of *Metropolitan Casualty Ins. Co. v. Brownell*, 294 U. S. 580, 584, 55 S. Ct. 538, 540:

"A statutory discrimination will not be set aside as the denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it."

In this connection, the definition of "reasonable" found in the dissenting opinion of Justice Brandeis in the case of

⁹ Chief Judge Simons held in the *Britt* case: "* * * Whatever we might think of the fairness of the differentiation, the discrimination was in pursuance of the bargaining process and not without some basis, forestalled a strike and was therefore not invalid. *Aeronautical Industrial District Lodge 727 v. Campbell, supra.*"

Quaker City Cab Company v. Penna., 277 U. S. 389, 406, 48 S. Ct. 553, 556 is of interest:

“ * * * the equality clause requires merely that the classification shall be reasonable. We call that action reasonable which an informed, intelligent, just-minded, civilized man could rationally favor.”

It is now incumbent upon us to apply these standards to the petitioner's action in the instant case. We have already explored the consequences which would in all probability have flowed from a failure to adopt the seniority agreements here under attack. We have indicated the historical background of post World War I conflict between veteran and non-veteran workers. This history clearly justified the apprehension of petitioner of a repetition of such conflict unless a reasonable accommodation of the interest of both groups in security of employment was effected. We submit that these considerations, without more, adequately qualify the seniority agreements as reasonable and therefore valid under the standards of judgment which we find in the decisions of this court. In addition, however, general considerations of fairness to returned servicemen made the negotiation of these clauses not only a rational but possibly the *most* reasonable solution of the problem of veterans' readjustment to civilian and industrial life. The seniority clauses here under attack represent a decision on the part of the petitioner to make well deserved provision for *all* World War II veterans represented by petitioner in collective bargaining. Consideration for training and qualifications attained while in military service was accorded such veterans. It was decided to treat a veteran without prior service with the company as one whose entry into employment was delayed by military service and to treat the event of his induction into service as equivalent to having hired in at that time. It was reasonable to assume that the ma-

majority of the beneficiaries of these seniority clauses would probably be youthful volunteers and the clauses represent an effort to avoid penalizing early military service by not letting it operate to defer the accumulation of seniority which might otherwise have accumulated. This course was adopted even though it afforded some slight prejudice to the few men who, after June 21, 1941, and after the President declared a state of unlimited national emergency, first hired in. The man who voluntarily or otherwise was early in military service was rewarded, and only at the expense of people who in the same period of national emergency headed for the security of a factory and possible deferment from the draft. Furthermore, during World War II, a considerable number of married women and other older persons were hired by employers engaged in war production. It was the belief of the petitioner that in the face of the predicted decrease in employment during the immediate post-war period, veterans should be given preference in job security over such persons who in all probability were in smaller actual need of remunerative employment. The seniority clauses here under attack aided in accomplishing that purpose.¹⁰

The economist Frederick H. Harbison, recognized the validity of the petitioner's reasoning in a booklet entitled *Seniority Problems During Demobilization and Reconversion* (Industrial Relations Section, Department of Economics and Social Institutions; Princeton University, Princeton, N. J. 1944). He notes at pages 12-14:

¹⁰ These same considerations persuaded Congress to give similar credit for time spent in military service to all World War II veterans who are civilian employees of the United States Government. Veterans Preference Act, 58 Stat. 387, 5 U. S. C. Sec. 851-869. The government in its role as an employer of a large number of people thus recognized and adopted prior military service, irrespective of prior employment, as a valid basis for granting employment and job retention rights.

"Many soldiers and sailors entered military service from schools or colleges and consequently never were previously employed. As stated above, others had only temporary jobs entitling them to no or to limited seniority status. Still others, who once had permanent employment, will have seniority rights which are valueless because of the elimination of the particular company or plant to which such rights were attached. Another group of veterans may allow their seniority to lapse because they are unwilling, for one reason or another, to return to the previous employment. *To the extent that the acquisition and retention of good jobs is closely bound up with seniority, the veterans having no seniority rights will have one strike against them in the post-war labor market.*

"Moreover, the veterans without rights are likely to outnumber those who have valid seniority rights. Had such veterans not been in the military service, they probably would have found jobs as war workers and might have acquired both skill and seniority constituting a substantial investment in employment security. For this reason, a very strong attack on seniority barriers may be made by post-war veterans' organizations on the grounds that they constitute unfair discrimination in employment. It is in this connection that the conflict between veteran status and seniority status may become most acute.

"Employers in the automobile industry first suggested that veterans with no pre-service industrial employment should be granted artificial or 'synthetic' seniority for the time spent in military service, such accumulated seniority to be applicable in any plant where tenure of employment and advancement are affected by an individual's seniority status. They pointed out certain advantages to a plan of this kind. Generally speaking, the most alert and best qualified young men have been taken by the Army and Navy, while industry has been forced to

scrape the bottom of the manpower barrel for handicapped workers, women, older employees and others not normally part of the pre-war labor force. Employment standards of necessity have been lowered, and many working forces are now composed of a large proportion of relatively inefficient workers. Under many agreements such workers have secured seniority status during their period of wartime employment. These workers could be displaced after the war in an orderly manner by qualified veterans whose 'synthetic' seniority was greater than the regular seniority of the wartime employees. In this way, of course, employers might be able to procure a more competent and stable post-war working force provided they were able to establish sufficiently high standards for qualification for jobs. Thus, in addition to its patriotic appeal, this proposal has definite practical value.

"At least some of the displaced war workers may be able to find peace-time jobs before the greater proportion of servicemen are released. Thus war workers will have an additional head start over returning veterans in respect to seniority if they are able to use the seniority they acquired in war employment to claim permanent jobs in reconverted plants. *Considered from this angle, the demand on the part of veterans for 'synthetic' seniority equal to the number of years spent in military service cannot be construed as an attempt to secure preferential treatment, but only as a means of preventing discrimination and of securing equality of opportunity to employment.*" (Emphasis added.)

The Supreme Court of Tennessee in 1950 had occasion to review the propriety of seniority provisions substantially similar to those involved in the instant case. In *Haynes v. United Chemical Workers, C. I. O.* 190 Tenn. 165, 228 S.W. 2d 101, provisions in a contract between the union and employer granted to veterans of World War I and II sen-

iority credit equal to 25% of the time spent in the armed forces during such wars, despite the fact that they had not previously been employed by the company. Other employees sought an adjudication that such provisions were invalid as impairing the seniority rights of non-veterans as well as those veterans who had been employed by the company before entering military service. The validity of the contract was upheld on the following reasoning:

"Section 11, above provides, in effect that veterans who enter the service of the company prior to a certain date will receive seniority credit to a limited extent for the time spent by them in the defense of our country. Veterans are thus given a measure of job security by reason of their military service so as to provide for them a fraction of the job security they would have had, if instead of serving with the armed forces, they had been in the employ of the company.

"(4) It seems to us that the provisions of this Section, instead of being against 'public policy', are in accord with the accepted policy of the State and Nation. It has been the policy of both the State government and the Federal government to give veterans preferences and other benefits not afforded to other citizens because of their military service.

"It is argued on behalf of the appellants that the provision of the contract in question above quoted comes within the holding of the Supreme Court of the United States in the case of *Steele v. Louisville & N. R. Co.*, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173, 185. In the *Steele* case an entire racial group, who could not be members of the Union, the exclusive bargaining agent, were systematically discriminated against. That clearly is not the situation in the case before us. The provision of the contract complained of herein instead of being an exclusion of a specified group as was in the *Steele* case, is in effect, a provision in accord with the feeling of most

of the people in the Country. To strike this provision down and say that it is void and against public policy, to include in a contract slight preference in favor of veterans, would be slapping the feeling of the people of the State and Nation in the face."

In concluding this phase of the argument, we submit that these seniority clauses were on their face a reasonable accommodation of conflicting interests within the total group represented by the union, were reasonably calculated to conserve the interests of the entire group and of the union as its representative and were therefore valid under the criteria of judgment established in the *Steele* case.

III.

The theory and philosophy of collective bargaining in a free economy, as expressed by Congress in the Labor Management Relations Act, 1947, requires that the discretion of the collective bargaining representative as to what are, "relevant" factors for purposes of classifying represented employees in contract negotiations be upheld unless the exercise of such discretion gives evidence of hostility or malice towards a particular group, is illegal, or in violation of public policy.

It is basic public policy of the United States to support a free economy. It is a basic prerequisite of a free economy that decision-making power be decentralized. See J. K. Galbraith, *American Capitalism, The Concept of Countervailing Power* (Boston 1952) Chapter XII. This approach favors the practice of having economic decisions made by private units rather than public authorities. It has been found that, insofar as the employment relationship and wage structure is concerned, the process of free collective bargaining between labor unions and employers best implements this philosophy and practice. See Chas. C. Killingsworth, *Organized Labor in a Free Enterprise Economy*,

Chapter 15 of *The Structure of American Industry*, edited by Walter Adams (New York 1950). It follows from this that the widest possible discretion should be given to the parties in the collective bargaining process and that courts should substitute their judgment as to what is a proper labor contract for the judgment of the parties only in a very limited number of circumstances. It will be the purpose of this section of the argument to explore in some detail both the desirability of allowing a wide discretion to the negotiating parties in the collective bargaining relationship and to clarify further the standards to be employed in reviewing the exercise of such discretion.

The *National Labor Relations Act*, 61 Stat. 136, 29 U. S. C. 151 is designed to effectuate the basic economic principles enumerated above. Section 9 (a) of that Act gives statutory collective bargaining representatives exclusive authority to negotiate collective agreements for the entire represented group of employees irrespective of the desires of minorities within that group who might wish to engage in individual bargaining. Cf. *J. I. Case Co. v. National Labor Relations Board*, 321 U. S. 332, 64 S. Ct. 576; see also *Llewellyn v. Fleming*, 154 F. 2d 211 (C. C. A. 10); cert. denied, 329 U. S. 715. Congress imposed no limits on the scope of bargaining, or on the subjects concerning which employers and unions may bargain, or on the bargains they may reach, excepting only agreements which condition employment on union membership.¹¹ In addition, this Court has held that labor agreements may not violate other laws such as the Anti-Trust Laws. *Allen-Bradley Co. v. Local Union #3*, 325 U. S. 797, 65 S. Ct. 1533. Aside from these limitations Congress permitted the parties to collective bargaining the widest discretion as to the terms and sub-

¹¹ *Wallace Corp. v. NLRB*, 323 U. S. 248, 65 S. Ct. 238.

jects to be incorporated in collective bargaining agreements.

This was necessary under the statutory scheme established by Congress in the area of labor relations and in light of the general economic philosophy underlying that scheme. It would be inconsistent for Congress to give to a union on the one hand *exclusive* power to represent and bargain for a group of employees and on the other hand to require that the validity of the bargain reached must await a ruling from a court or other public authority.¹² If Congress had intended the latter result it would have provided, as the laws of some countries do provide, that collective bargaining contracts be submitted to public authorities for approval.

The position in which a large labor organization, representing hundreds of thousands of employees, finds itself is a further consideration in support of the freedom from all but limited judicial review for which we argue. Any union that represents a large unit of employees employed in many crafts and classifications, many departments, many plants, in many localities and different circumstances, has the difficult problem of reconciling differences in the interests of many classes and groups.

It is in the union's interest to reconcile these differences as best it may and to accommodate its policies and practices to the differing and sometimes conflicting interests of various classes or groups that comprise the bargaining unit, or who may become members of the unit. In doing this, it must weigh the effect on itself of whatever it does

¹² See the dissenting opinion of Mr. Justice Frankfurter in *Elgin J. & E. Ry. Co. v. Burley*, 327 U. S. 661, 668, 66 S. Ct. 721, 724: "When peaceful settlements between carriers and brotherhoods are subject to such hazards [of attack in litigation], the carriers can hardly be expected to negotiate with a union whose authority is subject to constant challenge."

to the greater or lesser advantage of one group or class as against another; and it must weigh the effect of what it does on the solidarity of the unit and on the bargaining strength that flows from that solidarity. It is interested in holding itself together and in holding to the greatest extent possible the loyalty of all elements of the unit. Bitter dissidence in a small group may be more destructive of its solidarity and bargaining strength than mild disappointment in a larger one.

In the absence, at any rate, of a clear showing of fraud or bad faith on the part of the union's bargainers, no justification can exist under the National Labor Relations Act or any other law, or in common sense, for a court or other branch of the Government to substitute its judgment for the union's on what is best for the union as a whole.

The Court of Appeals ignores the well known practice of most unions to submit their proposed collective agreements to their members for ratification. In the present case, it was entirely foreseeable that the clause in question could affect adversely the interests of the great majority of Ford's employees, consisting of employees who were not veterans and those who left Ford for the armed services and thereafter returned to work. May a dissident minority, or even a majority of the present employees now, years later, reverse the majority that approved the clause and set aside all that the parties did under it?

These considerations were ably summarized by the Court in the case of *Foster v. General Motors Corp.*, 191 F. 2d 907 (C. A. 7). In that case a collective bargaining agreement which denied returned veterans vacation pay because qualifying for it required actual employment at a time when such veterans were in military service, was held *not* to violate the rights of such veterans under the Selective Training and Service Act. The Court stated:

"After all, a union as an authorized bargaining agent no doubt is legitimately interested in attaining the best possible contract for its members as a whole, and with numerous diversified interests among its members, especially when the membership is large, there is nothing strange or unnatural if some segments of its membership are placed at disadvantages when compared with others."

See also *Fries v. Pennsylvania Rd.*, 195 F. 2d 445 (C. A. 7) and *Ryan v. N. Y. Central Railroad Co.*, 267 Mich. 202, 255 N. W. 365.

It follows from these considerations that judicial nullification of collective bargaining agreements must be limited to a small number of specific situations. One is where the agreement violates express national policy regarding collective agreements as set out in the Labor Management Relations Act, 1947. Another is where constitutional standards of equal protection or due process are violated. A third instance would be presented by a situation where the agreement is against public policy. The instant agreement is manifestly not invalid by any of these criteria. The union's action was demonstrably reasonable and in harmony with public policy as well as public sentiment. In effect then what the Court of Appeals has done is to say that it does not believe the union's action in the instant case to have been wise. The Court of Appeals has chosen to substitute its judgment for that of the negotiating parties.

Courts have almost uniformly held that unless the union's action can be shown to be hostile, fraudulent, arbitrary or against public policy, such action must be accorded finality for purposes of judicial review. We again draw this Court's attention to standards which it has itself established in the *Steele* case in reviewing the action of labor

unions, such standards being analogous to those which it employs in reviewing the constitutionality of legislative action under the 14th Amendment. See also *Haynes v. United Chemical Workers, CIO*, 190 Tenn. 165, 228 S. W. 2d 101; *Shaup v. Brotherhood*, 223 Ala. 202, 135 So. 327; *Yazoo v. Mitchell*, 173 Miss. 594, 161 So. 860; *Allen-Bradley Co. v. Local Union #3*, 325 U. S. 797, 65 S. Ct. 1533. *Jennings v. Jennings*, Ohio Ct. App. (1949) 91 N. E. 2d 899, 24 Lab. Rel. Ref. Man. 2242.

The position which the respondent Huffman is urging this Court to adopt is one which states flatly that an employee's pre-employment military service is not a relevant factor for the union to consider in collective bargaining negotiations within the meaning of the *Steele* case. By the same token he argues that an employee's family situation and background or experience before working for his present employer are all irrelevant factors not within the legitimate concern of the collective bargaining representative. Respondent seeks to liken such differences to differences which are truly irrelevant, such as differences in race, church affiliation or personal appearance. The respondent's contentions are clearly incompatible with the theory of collective bargaining discussed above, nor are they in accord with actual current collective bargaining practice. The following factors are enumerated by Leonard J. Smith in *Collective Bargaining*, Prentice Hall, Inc. (New York 1946) at page 191 as those which should be and are considered by parties negotiating a seniority system: length of service; merit or efficiency; *marital or family status*; abilities (physical, mental, experience). Frederick H. Harbison in *Seniority Policies and Procedures as Developed Through Collective Bargaining* (Industrial Relations Section, Department of Economics and Social Institutions, Princeton University, Princeton, N. J. 1941) at page 38 writes:

"Such factors as family status, number of dependents, place of residence, and citizenship, are often mentioned in seniority provisions."

On occasion industry-wide seniority systems have been set up under which an employer grants seniority credit to an employee for employment service elsewhere in the industry. See *Labor and Nation*, November-December 1947, page 13; 21 Lab. Rel. Ref. Man. 20; see also Bureau of National Affairs, *Collective Bargaining Contracts* (Washington 1941), page 493. Seniority preference is frequently given to physically handicapped employees who would have difficulty finding temporary work during lay-offs. See Malcolm W. Welty, *Labor Contract Clauses in the Automotive and Aviation Parts Manufacturing Industry* (Detroit 1945), pp. 248 ff; Bureau of National Affairs, *Collective Bargaining Contracts* (Washington 1941) page 290, 291; Bureau of National Affairs, *Collective Bargaining Negotiations and Contracts*; 20:551 at page 557. In fact, the very clauses here under attack have received widespread recognition. United States Department of Labor, Bureau of Labor Statistics Bulletin #908-11, *Collective Bargaining Provisions, Seniority* (1949), page 13; United States Department of Labor, Bureau of Labor Statistics, *Reemployment of Veterans under Collective Bargaining*, (October 1947) pp. 26 ff; 15 Lab. Rel. Ref. Man. 2535; 19 Lab. Rel. Ref. Man. 29. See also *Haynes v. United Chemical Workers*, 190 Tenn. 165, 228 S. W. 2d 101 approving seniority provisions similar to those here under attack.¹³ In fact, it should be pointed out that the seniority of respondent Huffman, who is a World War II veteran, which

¹³ For approval of similar provisions in a labor agreement see Volume 25, *War Labor Reports*, p. 217; 16 Lab. Rel. Ref. Man. 1864. See also Bureau of National Affairs, *Military Leave Policies of 500 Corporations*, Special Survey (Washington 1950), pp. 13, 17.

he claims to have been undermined, exists only by virtue of the fact that he received exactly that which he complains of namely, seniority credit for the time spent in the armed forces. *Huffman's seniority with Ford is based upon a principle of accepting military service as equal to service for Ford.* He accepts this principle and wields it as the basis for this action, yet he would deny the application of the very same principle to another as being based on irrelevant facts, merely because all of the latter's military service came before employment:

It was held that labor unions may consider such social factors as marital status and such economic factors as the great depression as relevant for purposes of making distinctions in seniority agreements in the case of *Hartley v. Brotherhood*, 283 Mich. 201, 277 N. W. 885. In that case it was held to be proper, in view of economic conditions to reduce drastically the seniority rights of married women, thus making certain that those who needed employment most would hold it longest. The Court in upholding the action of the union said:

"This agreement was executed for the benefit of all the members of the brotherhood and not for the individual benefit of the plaintiff. When by reason of changed economic circumstances, it became apparent that the earlier agreement should be modified in the general interest of all members of the brotherhood it was within the power of the latter to do so, notwithstanding the result thereof to plaintiff"

"A different situation might be presented had the agreement of 1932 been accomplished as a result of bad faith, arbitrary action or fraud directed at plaintiff on the part of those responsible for its execution."

See also *Schlenk v. Lehigh Valley R. R. Co.*, 74 F. Supp. 569, (D. C., D. N. J.); *Gauweiler v. Elastic Stop Nut Corp. of America*, 162 F. 2d 448, (C. A. 3).

The unreasonably narrow interpretation of a collective bargaining representative's authority for which respondent argues becomes even more untenable when one considers that it would make impossible the negotiation of pension and insurance benefits varying according to the number of a retired employee's dependents. We submit that the number of dependents is clearly a "relevant" factor which a labor union may in good faith consider in negotiating for employee benefits.

It follows therefore that the Court of Appeals erred in holding that the provisions granting seniority credit to veterans not previously employed for time spent in military service were invalid because they were based on factors not within the authority of the collective bargaining representative to consider. To the contrary, it is submitted that these provisions were not only within the authority of the union to negotiate but were in fact a most reasonable answer to the problem which they were designed to meet. In any case, the union's action in negotiating these clauses meets any test of validity which a court can properly apply in light of the system of free collective bargaining which is the public policy of the Nation.

IV.

A great variety of seniority systems (or employment security arrangements) is available to the negotiating parties in collective bargaining, and all such systems, insofar as they are reasonable and not against public policy, should be and generally have been sustained under judicial review.

The Court of Appeals held the seniority provisions here under attack to be invalid on the following grounds:

"Plainly, a contract which, in the case of lay-off, prefers men without experience over men with experience, no other facts appearing and no other valid reasons for preference existing, is discriminatory. When an employee who entered the Ford Plant in 1945 is retained in lay-offs over Huffman, who entered in 1943, Huffman is discriminated against" (R. 38).

The Court, in effect, holds that a seniority system which may, in any application fail to recognize actual employment experience is inherently discriminatory unless some valid reason for this failure exists. It then apparently assumes that the veteran who was first hired by the company will necessarily or usually have most actual work experience. The assumption ignores the fact that an employee may have entered the armed forces within a matter of days or weeks after he was first employed by Ford and remained in the service many months after other veterans had returned and resumed, or in the case of new employees, begun, their employment with Ford. It is apparent that a veteran who did not work for Ford prior to his entry into military service, as well as other veterans who did work for Ford, may have much more actual work experience than the veteran who was employed by Ford for a short period prior to his military service. Under the provisions of Sec-

APPENDIX A

Pertinent Statutory Provisions

National Labor Relations Act, 61 Stat. 140 ff, 29 U. S. C. Section 157, Section 158 (b)(1), Section 159 (a) and Section 160 (a):

"157. Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a)(d) of this title. As amended June 23, 1947, 3:17 p. m. E. D. T. c. 120, Title I, 101, 61 Stat. 140."

"158. Unfair Labor practices

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances."

"159. Representatives and elections—Exclusive representatives; employees' adjustment of grievances directly with employer

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment."

"160. Preventing of unfair labor practices—Powers of Board generally"

(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been, or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this subchapter or has received a construction inconsistent therewith."

Railway Labor Act, 48 Stat. 1187, 45 U. S. C. Section 152:

"152. Organization and collective bargaining; freedom from interference by carrier; assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representatives of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time; or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization."

Selective Training and Service Act of 1940, 54 Stat. 890,
50 U. S. C. 308:

"Any person who is restored to a position . . . shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority . . ."

Veterans Preference Act, 58 Stat. 388, 5 U. S. C. Section 852 and Section 853:

"852. Examinations; earned ratings; additional credit

In all examinations to determine the qualifications of applicants for entrance into the service ten points shall be added to the earned ratings of those persons included under Section 851 (1), (2), (3), and (5) of this title, and five points shall be added to the earned ratings of those persons included under section 851 (4) of this title; *Provided*, That in examinations for the positions of guards, elevator operators, messengers and custodians, competition shall be restricted to persons entitled to preference under this chapter as long as persons entitled to preference are available and during the present war and for a period of five years following the termination of the present war as proclaimed by the President or by a concurrent resolution of the Congress for such other positions as may from time to time be determined by the President. As amended Dec. 27, 1950, c. 1151, 2(a), 64 Stat. 1147."

"853. Credit for experience

In examinations where experience is an element of qualification, time spent in the military or naval service of the United States shall be credited in a veteran's rating where his or her actual employment in a similar vocation to that for which he or she is

examined was interrupted by such military or naval service. In all examinations to determine the qualifications of a veteran applicant, credit shall be given for all valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether any compensation was received therefor. June 27, 1944, c. 287, § 4, 58 Stat. 388."

tion 8 of the Selective Training and Service Act of 1940 (and absent the seniority agreement), the veteran who was employed by Ford prior to his entry into the service would have been, in every case, preferred over the veteran who was not, despite the fact that the former may have less actual work experience. This is because that Act gives the veteran who was employed before he entered the service seniority or experience credit equal to the time he spent in the service and does not give such credit to the veteran who was not so employed. This would have resulted in an inevitable discrimination against many more experienced veterans, who, though not employed before their military service, nevertheless hired in well before the return to the plant of other veterans who had been but briefly employed before the military service.

The operation of the seniority clauses in question may be illustrated as follows:

"A" is in all the following illustrations a veteran who, like the respondent Huffman, was employed by Ford before entering military service.

"A" hires in Jan. 1, 1942.

"B" goes into military service Jan. 1, 1941.

"A" goes into military service Jan. 1, 1944.

"B" hires in on Jan. 1, 1945.

"A" returns Jan. 1, 1945.

"B" on Jan. 1, 1946 has one year work experience and five years of seniority credit.

"A" on Jan. 1, 1946, has three years of work experience and four years of seniority credit.

"A" has more work experience and less seniority credit.

"A" hires in Jan. 1, 1941.

"B" goes into military service Jan. 1, 1942.

"A" goes into military service Jan. 1, 1942.

"B" goes to work Jan. 1, 1943.

"A" returns Jan. 1, 1945.

"A" on Jan. 1, 1946 has two years of work experience and five years of seniority credit.

"B" on Jan. 1, 1946 has three years work experience and four years of seniority credit.

"A" has less work experience than "B", but greater seniority credit.

"A" hires in Jan. 1, 1942.

"A" goes into military service Jan. 1, 1943.

"A" returns to work Jan. 1, 1945.

"A" on Jan. 1, 1946 has two years of work experience and four years of seniority credit.

"B" goes into military service Jan. 1, 1941.

"B" hires in Jan. 1, 1943.

"B" on Jan. 1, 1946 has three years of work experience and five years of seniority credit.

"A" has less work experience than "B" and also has less seniority credit than "B".

"A" hires in Jan. 1, 1942.

"A" goes into military service Jan. 1, 1944.

"A" returns to work Jan. 1, 1945.

"A" on Jan. 1, 1946 has three years of work experience and four years of seniority credit.

"B" goes into military service Jan. 1, 1943.

"B" hires in Jan. 1, 1945.

"B" on Jan. 1, 1946 has one year of work experience and three years of seniority credit.

"A" has more work experience than "B" and more seniority credit than "B".

It is evident from the Court's opinion that the discrimination it condemns results from the fact that the agreement will not, in every case, assure that the veteran with the greatest actual working experience is retained in case of

lay-off. The Court fails to recognize that the same defect was inherent in the seniority system under the Selective Training and Service Act of 1940 (and before the collective bargaining agreement).

In fact, an examination of the various situations which can result under the operation of the seniority provisions here involved reveals that these provisions are, in a variety of applications, unrelated to actual work experience with the particular employer. The operation of these clauses can work in favor of a veteran in Huffman's position (i.e., he might have greater seniority credit but less work experience than a veteran with no prior service with the company) as frequently as they can work in favor of a veteran like "B" in illustrations given above. On the other hand, the clauses in question can also operate so as to give greater seniority credit to the veteran with greater actual work experience. Admittedly, these provisions do not base seniority (i.e., job security) exclusively on actual work experience with the particular employer involved. Nor can Huffman argue that *his* seniority is based solely on such experience. Instead, the job security for all veterans is based, in part, on *another* "relevant" factor, namely, the amount of time which a veteran was required to spend in military service. The relevancy, for all purposes of collective bargaining, of this factor has already been argued at length.

The Court of Appeals has, in another respect, misconstrued the operation of the provisions here involved. The opinion of the Court of Appeals says (R. 34):

"The question squarely presented is whether the union and management can by contract create preferential seniority in men not employed when they entered the armed services as against men, also veterans, who were employed when they entered the armed services."

Throughout the remainder of the opinion, the Court adheres to this view of the question.

But the class on behalf of which the plaintiffs sue consists of all employees, veterans and non-veterans alike, whose

"positions on the seniority roster at Ford's Louisville Works have been lower than . . . their true hiring-in dates would entitle them by reason of the contract clause of whose validity complaint is made herein" (R. 5).

Thus, the class includes non-veterans and veterans who formerly worked for Ford. *It includes also veterans not previously employed by Ford who were first employed by Ford at about the same time as other such veterans who had had longer periods of military service.*

Thus, the clause differentiates as between members of the very class that the respondent claims it favors.

This shows that the clause does not "discriminate" in favor of veterans against non-veterans, or in favor of one class of veterans as against another. What it does is to give all veterans what the law gives to some; credit for the time they spent in the armed forces.

The position which the respondent wishes this Court to adopt is that a seniority system which does not rigorously adhere to the practice of basing seniority on actual work experience with the particular employer is discriminatory and invalid. This position is clearly untenable and ignores a wide variety of employment security arrangements which in several ways need not necessarily be based on actual work experience with the present employer. *Departmental* seniority will in many instances impose hardship on those with greater plant-wide or employer-wide seniority. The worker with greater skill may be adversely affected by a seniority system based on length of service without regard

to skill. On the other hand, many contracts make special provision for exceptionally skilled workers, thus adversely affecting those with greater length of service. Seniority systems have been based on an employee's family status, thus adversely affecting both workers with greater length of service or greater skill. We have mentioned that work experience in the industry is occasionally used as a basis for determining seniority with a particular employer. An employee's training or educational qualifications might be used as a basis for job preference. Such an arrangement would be very much in the interest of many employers. Unless seniority is artificially restricted to length of service on a plant-wide (or, would the respondent insist, employer-wide?) basis, a great variety of systematic and orderly methods for operating a seniority system is available to the negotiating parties.¹⁴ All such methods must be sustained by a court insofar as they are rational and do not evidence hostile or unreasonable discrimination against any group.¹⁵

¹⁴ See Frederick H. Harbison, *The Seniority Principle in Union-Management Relations*, (Industrial Relations Section, Department of Economics and Social Institutions, Princeton University, Princeton, N. J. 1939).

¹⁵ Examples of the widespread approval by the Courts of different types of seniority systems and manipulation therewith, in the absence of racial discriminations, fraud or caprice, may be found in a large number of judicial decisions:

Schlenk v. Lehigh Valley R. R. Co., 74 F. Supp. 569 (D. C., D. N. J.);

Gauweiler v. Elastic Stop Nut Corp. of America, 162 F. 2d 448 (C. A. 3);

Haynes v. United Chemical Workers, 190 Tenn. 165, 228 S. W. 2d 101;

Hartley v. Brotherhood, 283 Mich. 201, 277 N. W. 885;

Capra v. Local Lodge, 102 Colo. 63, 76 P. 2d 738;

Shaup v. Brotherhood, 223 Ala. 202, 135 S. 327;

Ryan v. N. Y. Central R. R. Co., 267 Mich. 202, 225 N. W. 365;

Aden v. L. & N. R. R. Co., 275 S. W. 511 (Ct. of Appeals of Ky.);

Donovan v. Travers, 285 Mass. 167, 188 N. E. 705;

Yazoo v. Mitchell, 173 Miss. 594, 161 So. 860;

Burton v. R. R., 148 Ore. 648, 38 P. 2d 72;

Mayo v. Great Lakes Lines, 333 Mich. 205, 52 N. W. 2d 665;

Woolridge v. R. R., 118 Colo. 25, 191 P. 2d 882.

To deny parties to collective bargaining the widest possible discretion in the field of seniority would be to vitiate the collective bargaining process. We submit that the decision of the Court of Appeals, if allowed to stand, would have this adverse effect.

V.

Application of the doctrine requiring exhaustion of administrative remedies requires that respondent should have resorted to the administrative processes of the National Labor Relations Board before seeking judicial relief against the petitioner.

The opinion of the Court of Appeals appears to assert immediate jurisdiction of the District Court over a union unfair labor practice. This appears to us to be implicit in the assertion by the Court (R. 36) that the failure of the collective bargaining representative to represent the employees fairly and without discrimination violates the rights guaranteed them by Section 7 of the National Labor Relations Act, 61 Stat. 136, 29 U. S. C. 151. Thus the Court says:

"Section 157, 29 U. S. C. provides that the employees have the right to bargain collectively and 'to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.' This means that in entering into labor contracts the bargainers must make their agreements with a view to the rights of the entire group bound by them, and not enter into agreements which discriminate against one part for the benefit of another."

Section 157, 29 U. S. C., cited by the Court, is Section 7 of the National Labor Relations Act as amended by the Labor Management Relations Act of 1947. Section 8(b) of that Act provides as follows:

"It shall be an unfair labor practice for a labor organization or its agents (1) to restrain or coerce (a) employees in the exercise of the rights guaranteed them in Section 7"

It would therefore seem to follow necessarily from the decision of the Court of Appeals that the alleged failure of the defendant labor organization to represent employees without discrimination restrains the employees in the exercise of rights guaranteed them by Section 7 of the Act and that the union is guilty of an unfair labor practice within the meaning of the Act. But, such a holding would be in derogation of the exclusive jurisdiction of the National Labor Relations Board. The National Labor Relations Act provides exclusive administrative procedures designed to remedy and prevent unfair labor practices. Thus, Section 10(a) (29 U. S. C. 160) provides as follows:

"The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce."

These procedures have neither been resorted to nor exhausted in the instant case. Numerous decisions have held that these procedures, as established by the Act, confer upon the National Labor Relations Board exclusive original jurisdiction. *California Association v. Bldg. Trades Council*, 178 F. 2d 175 (C. A. 9); *Amazon Cotton Mills Company v. Textile Workers Union*, 167 F. 2d 183 (C. C. A. 4); *Amalgamated Association, et al. v. Dixie Motor Coach*, 170 F. 2d 902 (C. A. 8); *Bakery Drivers Union v. Wagshall*, 333 U. S. 437, 68 S. Ct. 630; *Costaro v. Simons*, 303 N. Y. 318, 98 N. E. 2d 454; *Wm. P. McNish v. The American Brass Company, et al.*, Supreme Court of Errors of Connecticut, April Term, 1952, 89 A. 2d 566, 30 Lab. Rel. Ref. Man. 2254.

The Court's attention is drawn to the fact that the *Steele* case *supra*, and other decisions applying its principle, involved collective bargaining representatives deriving their authority (and hence their concomitant obligations) from the Railway Labor Act. That statute, unlike the National Labor Relations Act, here involved, provides no administrative remedy to an employee who is discriminated against, thus making a strong case for granting immediate judicial relief, since an employee would otherwise be without any remedy.¹⁰ In contrast, the administrative machinery of the National Labor Relations Act, provides adequate remedies before the National Labor Relations Board in those instances where the collective bargaining representative has breached its statutory obligations. As was argued above, the Court below held, in effect, that an unfair labor practice has been committed by the union. If so, Huffman had available the remedy of filing a charge of unfair labor practice before the National Labor Relations Board. Even in the absence of a finding that a specific unfair labor practice was committed the Board has afforded an administrative remedy to correct discriminatory representation by labor organizations. Thus, it follows that, in contrast to cases arising under the Railway Labor Act, there existed here an administrative remedy which was not, but should have been resorted to, even if the alleged discrimination here complained of is not a specific unfair labor practice within the meaning of the Act. The National Labor Relations Board, in the case of *RKO Radio Pictures, Inc.*, 61 N. L. R. B. 112, a representation proceeding, held that a certification which it had issued would be rescinded if it were shown that non-discriminatory representation had been denied to any group of employees in the bargaining unit. The Board in that case announced:

¹⁰ See *Graham v. Brotherhood of Locomotive Firemen*, 338 U. S. 232, 239; 70 S. Ct. 14, 18.

"It is with deep concern, therefore, that we note intimations appearing in the record concerning the possibility that the unions may indulge in reprisals designed to prevent persons who have customarily performed both acting and extra work from continuing to do so. It should be emphasized in this regard that it is the duty of the exclusive representative of the employees in an appropriate bargaining unit to represent all employees therein without hostile discrimination and with a view to the promotion of their best interest. (Citations.)

"Should either the Guild or the Independent engage in such restrictive practices or otherwise circumvent the objectives of the Board inherent in this decision, the Board will not regard itself as precluded, upon consideration of the circumstances thus presented, from taking appropriate remedial action, including either a redetermination of the bargaining unit or revocation of the certification herein."

To the same effect is *Southwestern Portland Cement Company*, 61 N. L. R. B. 1217. A similar holding may also be found in the case of *Larus and Brothers Company, Inc.*, 62 N. L. R. B. 1075, where the Board stated:

"* * * we have conceived it to be our duty under the statute to see to it that any organization certified under Sec. 9 (c) as the bargaining representative, acted as a genuine representative of all the employees in the unit.

"If it were not for the additional circumstances set forth below we should rescind the AFL certification."

The Board decided this case, a representation proceeding, in part on the authority of the *Steele* case and noted specifically that the policies which it was enforcing had *not* been developed administratively under the Railway Labor Act.

The decision of the Court of Appeals thus violates the well established doctrine which precludes judicial relief prior to the exhaustion of available administrative remedies. *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 58 S. Ct. 459. It was error for the Court of Appeals to fail to direct the respondent to seek relief before the National Labor Relations Board.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Court below should be reversed.

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sions for the veterans it represents. As well might it be argued that because Congress has set minimum wages in many industries by the Fair Labor Standards Act, the Walsh-Healy Act and the Bacon-Davis Act, unions are prohibited from bargaining for more.

That the entire history of Congressional provision for employment security of veterans argues for a Congressional intent that the "gaps" should be filled by collective bargaining is fully developed in the main brief filed in Case No. 193 by Ford Motor Company.

Respondents also seem to impute to petitioner a claim for the plenary power of Congress to regulate labor relations in industries affecting commerce. Obviously no such claim is implied in our acceptance of the standards imposed by the Steele case for testing the validity of classifications made in collective bargaining. That the seniority provisions in question are reasonable and proper by those standards is fully developed in our main brief.

III.

The collective bargaining agent represents a large number of persons having a great variety of interests and problems arising out of their employment, and it is therefore inevitable that benefits are negotiated which apply to some and not to others. Furthermore, in the negotiation of benefits, the union of necessity must exercise a judgment as to what it deems to be of social or economic desirability.

Respondent seeks to analogize between the collective bargaining process, on the one hand, and settlement negotiations to determine questions of priority between bondholders and holders of preferred shares of a corporation, on the other hand. He points out that the representative of the bondholders would be amiss in its duties if it agreed

to greater benefits for bondholders with military service than for those without military service. Respondent argues from this that a union may not take into consideration military service and other factors such as, for instance, how many children a man has, in the negotiation of contract benefits. Respondent's analogy is both inappropriate and misleading. The representative of the bondholders has but one duty, namely, that of recovering as much money as possible for the represented class. This same interest is also the sole common element of interest among the members of the class. Workers represented by a labor union, on the other hand, have a great variety of interests, many of which are not uniformly applicable to all members of the class. Of necessity, therefore, the negotiating labor union must in its collective bargaining deal with a great variety of subjects not all of which are of the same or of interest to all the represented members and employees. We have pointed out in our brief a number of these subjects. A typical illustration would be the seniority preference which is frequently given to physically handicapped employees who would have difficulty finding temporary work during lay-offs. Such a contract benefit would clearly apply to only a small number. Another apt illustration would be a contract clause securing maternity leave benefits. Collective bargaining for more sanitary working conditions in some particular department would clearly be appropriate, while singling out a particular group of employees for benefit. Similarly, a concession from an employer to provide for parking space would clearly be within the scope of collective bargaining, while benefiting only those employees who drive to work. The negotiation of insurance or pension benefits varying with the number of dependents of an employee would also clearly seem to be legitimate and appropriate action by a labor organization, although the number of children in an employee's family is not in the narrow and

technical sense directly connected with the employee's employment relationship. Respondents deny the relevance of such matters because antecedent or unrelated to employment. Yet these matters may be and often are considered by labor unions in collective bargaining. By the same token, it is clearly appropriate for a labor organization to take into consideration the problems of returning servicemen who have re-employment rights protected by statute. The fact is, that the collective bargaining process, unlike respondents' bondholder analogy, is not merely a "dollar and cents" matter but is rather a dynamic process during which the differing economic, personal, and employment problems of all the workers represented must be and are taken into consideration.

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SUPREME COURT, U.S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 194

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, CIO, ETC.,

Petitioner,

vs.

GEORGE HUFFMAN, Individually, and on Behalf
of a Class, Etc., et al.,
Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF ON BEHALF OF THE
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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT**

**REPLY BRIEF ON BEHALF OF THE
PETITIONER**

Respondents' brief does not seriously oppose our basic position that a challenge to the validity of a collective agreement respecting seniority rights which rests for Federal jurisdiction on the fact that the exclusive authority of the bargaining representative derives from Federal law, is to be tested by substantially the same standards as the Court applies to legislation assailed as denying the equal protection of the laws. Without expressly conceding that this is so, and admitting only that the analogy is "a

"useful one" (R. 9)* the total thrust of respondents' brief, nevertheless, appears to be that the seniority provisions in question must fall by such a test for lack of "relevance" to authorized purposes of the collective bargaining agreement.

We submit that most of respondents' argument was anticipated and fully met in our main brief. The essential untenability of their position is, however, acutely exposed in certain aspects of their argument to which we here briefly reply.

I.

Respondents deny that collective agreements designed to preserve or strengthen the union as a bargaining representative are within the authority of a collective representative.

Respondents take direct issue with the relevance of showing, in defense of the seniority provisions in question, that they avoided a repetition of the post-World War I conflict between veterans and organized labor and, therefore, served the interest of the union as a whole. Respondents argue that such a defense "betrays" (R. 8) that "petitioner used its bargaining authority, not for the purposes intended by the National Labor Relations Act, but to implement and advance the public relations policies and the political, economic and social theories and philosophy of the International Union" (R. 8).

Petitioner's defense of the seniority agreement does not, of course, rest exclusively on the argument thus assailed by respondents. Other reasons are suggested as having induced the parties to the agreement—that it prevented rather than caused discrimination against veterans without

*All page references herein are to briefs for the petitioner (P. ...) and respondents (R. ...).

employment experience before military service (P. 21, 27-28), and that it accommodated conflicting interests within the total group represented (P. 21-32). But respondents' attack on this particular aspect of petitioner's argument clearly discloses that their total position largely depends on the proposition that it is not within the lawful authority of a collective bargaining representative to negotiate and contract for arrangements designed to enhance the security and bargaining power of the union. Respondents are driven by their own argument to the proposition that a collective bargaining representative may lawfully concern itself only with the *terms and conditions of employment*. They quote, but their argument ignores, the obviously controlling import in this connection of the guarantee of Section 7 of the National Labor Relations Act that

"Employees shall have the right * * * to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other *mutual aid or protection*." (Italics ours.)

The decision of this Court that the preferred seniority given by contract to the non-veteran union shop chairman was not in derogation of the rights secured a veteran under the Selective Training and Service Act, even during the first year of the Veteran's reemployment, because it inured to the collective bargaining strength of the whole group represented (*Aeronautical Lodge v. Campbell*, 337 U. S. 521, 69 S. Ct. 1287), though not adverse to Section 7, was clearly in recognition of the fact that the preservation and enhancement of the union's bargaining position is for the "mutual aid or protection" of the represented employees. And clearly such a contract term is not one which in the narrow sense concerns "the terms and conditions of employment".

The National Labor Relations Act and Title 3 of the Labor Management Relations Act, 1947, expressly permit contract terms looking toward the security of the union as an organization, even as an exception to the general prohibition against discrimination encouraging membership (proviso to Section 8(a)(3), permitting union shop agreements) and as an exception to the general prohibition against employer payments to the union (Title 3, Section 302 of the L. M. R. A., permitting check off of union dues). By judicial construction, the Act commands employers to bargain in good faith on union proposals for such measures of union security as the union shop and check-off of union dues. *National Labor Relations Board v. Winona Textile Mills, Inc.*, 160 F. 2d 201; *National Labor Relations Board v. Reed and Prince Mfg. Co.*, 118 F. 2d 874, cert. den. 313 U. S. 595, 61 S. Ct. 1119.

The Norris LaGuardia Act and the National Labor Relations Act represent, in their entirety, Congressional recognition of the struggle of unions for mere existence and an intervention to protect them against the more overt and socially intolerable forms of opposition. But no one would suggest that with the advent of these Acts the union had no longer any need to look to its own security. As shown above, the National Labor Relations Act itself authorizes bargaining for such additional security. The prevalence of clauses in collective agreements whereby the employer agrees to refrain from any action intended or calculated to undermine the union is further evidence of the legitimate concern of unions and their memberships for preservation of the union.

"Barring legislation not here involved, seniority rights derive their scope and significance from union contracts, confined as they almost exclusively are to unionized industry." (*Aeronautical Lodge v. Campbell, supra*, page 1290) Seniority systems were for the most part originally con-

ceded by employers with great reluctance and only in the face of economic pressure exerted by strong unions, but respondents argue in effect that a union may not lawfully contract for an intrinsically reasonable variation of a conventional seniority system, in order, in part, to protect itself against a serious potential of threat to its efficacy as a representative, if not to its very existence—although the continued existence of the entire seniority system may depend on the continued existence and efficiency of the union.

II.

Respondents' argument misconceives the standards for judicial review of collective bargaining agreements as established in the Steele case.

Respondents suggest in their brief (R. 9) that we have strained (in our brief) the analogy between the standards for judicial review of legislation and of collective bargaining agreements as delineated by this Court in the Steele case and assert:

"A bargaining representative, performing its function does not by virtue of the legislative analogy become entitled to *fill in the gaps* left by Congress." (Italics ours.)

Respondents do not amplify this curious suggestion of limitation on the authority of a collective bargaining representative and we are not altogether certain what is intended. The most obvious implication, however, would seem to be that because Congress secured the seniority of veterans who left employment to enter the armed forces and on release therefrom elected to return to their former employment, but went no further in securing private employment for other veterans, a collective bargaining representative is forbidden as a matter of law to "fill in the gaps" and may not lawfully bargain for more advantageous provi-

ARGUMENT.

I.

The Ruling of the Court of Appeals undermines the whole scheme of the National Labor Relations Act, as amended, and would make impracticable, if not impossible, the kind of collective bargaining that the Act requires. The remedy of the respondent employees lies in proceedings in their own union to bring about a change in the seniority clauses, or in proceedings under the National Labor Relations Act to change their bargaining representatives, not by collateral attack in court on a long-standing, lawful clause of the contracts.

Section 9(a) of the National Labor Relations Act, now as before Congress amended it, provides that representatives whom the majority of the employees in an appropriate bargaining unit designate

"shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *." (U. S. C. Sec. 159.)

Section 8(a)(5) makes it an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees. Section 10 empowers the National Labor Relations Board and the courts to force employers to bargain with representatives of their employees.

In passing the Act, Congress did two new and unique things.

First, it gave to labor organizations authority that no law gives to other voluntary associations, namely, authority to bind minorities who are not members of the associations, regardless of the wishes of the minorities, and even to the detriment of individuals and minorities.

In *J. I. Case Co. v. Labor Board*, 321 U. S. 332 (1943); this Court discussed the nature of collective agreements under the National Labor Relations Act, saying at pages 338-9:

"But it is urged that some employees may lose by the collective agreement, that an individual workman may sometimes have, or be capable of getting, better terms than those obtainable by the group and that his freedom of contract must be respected on that account. * * * The practice and philosophy of collective bargaining looks with suspicion on such individual advantages. * * * The workman is free, if he values his own bargaining position more than that of the group, to vote against representation; but the majority rules, and if it collectivizes the employment bargain, individual advantages or favors will generally in practice go in as a contribution to the collective result. * * *"

Besides giving representatives exclusive authority to negotiate collective agreements, even to the exclusion of individual employees and minority groups of employees themselves, Congress imposed on employers a statutory duty to bargain with the representatives. Ordinarily, the right to refuse to deal is an essential element of bargaining. Thus Congress made compulsory a process that in all other connections is essentially voluntary. Employers must recog-

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Supreme Court of the United States.

OCTOBER TERM, 1952.

No. 193.

FORD MOTOR COMPANY,

LIBRARY
SUPREME COURT, U.S.

Petitioner,

v.

**GEORGE HUFFMAN, individually, and on behalf of a
class, etc., and INTERNATIONAL UNION, UNITED
AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLE-
MENT WORKERS OF AMERICA, CIO,**

Respondents.

**BRIEF OF CHRYSLER CORPORATION, AMICUS CURIAE,
IN SUPPORT OF THE PETITION OF FORD MOTOR
COMPANY FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH
CIRCUIT.**

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Supreme Court of the United States,

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IN SUPPORT OF THE PETITION OF FORD MOTOR
COMPANY FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH
CIRCUIT.**

Chrysler Corporation, as an *amicus curiae*, submits this brief in support of the petition of Ford Motor Company for a writ of certiorari. Pursuant to Subdivision 9 of Rule XXVII of the Rules of this Court, Chrysler has obtained consent to its submitting this brief from all of the parties.

Opinions Below.

The opinions delivered in the Court of Appeals are reported in 195 F. 2d 170. The opinion of the District Court has not been reported (R. 26).

Interest of *Amicus Curiae*.

This *amicus curiae*, Chrysler Corporation, has for many years manufactured automobiles, trucks and automotive parts and accessories in many of the States of the United States and abroad. It employs more than 100,000 people for whom the respondent union is the exclusive bargaining representative under Section 9 of the National Labor Relations Act, as amended (29 U. S. C., Sec. 159).

In 1944 the standing of veterans whom Chrysler had not theretofore employed was a subject of intense bargaining between Chrysler and the Union. The parties seemed to agree in principle but did not agree in detail.

In 1945, as more veterans came to work for Chrysler as new employees, and as the end of the war increased the problem, Chrysler and the Union continued to explore the matter. Finally, in contract negotiations in the winter of 1945 and 1946, the parties reached agreement on a clause, which appeared in their contract dated January 26, 1946. This clause, substantially in the form to which Ford and the Union later agreed, was as follows:

"29. Veterans of World War II who were not formerly employed by Chrysler Corporation who possess evidence of satisfactory completion of service and make application for employment within ninety (90) days of their discharge from the United States Armed Forces and meet the other qualifications for reinstatement contained in the Selective Training and Service Act of 1940, as amended, and other applicable laws and

regulations, shall, upon completion of thirty (30) days employment, receive seniority credit equivalent to their period of service in the Armed Forces in the event of a layoff during their probationary period and, upon completion of their probationary period, shall be entered upon the seniority lists of their department or division with seniority credit equivalent to their period of military service plus their probationary period."

Chrysler and the Union kept the clause in their later contracts, dated April 26, 1947, and May 28, 1948. In their contract of May 4, 1950, they froze the standing for seniority that employees had under the clause, but did not renew the clause.

Between January 26, 1946, and May 1, 1949, more than 90,000 veterans who had not previously worked for Chrysler had jobs at one time or another in Chrysler's plants. While normal turnover, which is highest among new employees, has greatly reduced this number, nevertheless, Chrysler judges that perhaps five thousand or more of these veterans still work in its plants, with the seniority they acquired under the three contracts above mentioned. They are scattered all through the seniority lists and affect the standing of tens of thousands of employees with earlier hiring dates. Doubtless, many thousands of those who left had at one time or another advantages under the clause, and other employees had disadvantages, that they would not have had if the clause in question had not existed.

Obviously, declaring the clause void will bring chaos to the seniority standing of Chrysler's em-

4
ployees, in place of the orderly system that now has been in effect for nearly six and one-half years.

This chaos will prevail in hundreds, if not thousands, of other plants in many industries.

If this Court does not correct the judgment of the Court of Appeals, a great multiplicity of actions for damages, in which the effect of the clause upon each of literally hundreds of thousands of employees will be an issue, will result. The respondent Union, Ford Motor Company, and The Electric Auto-Lite Company already are confronted with such actions. Doubtless many more are in the making.

The only duty against "discriminating" by employers arises under the National Labor Relations Act, which forbids discriminating for union activity. It therefore is difficult for us to see how plaintiff employees could recover from employers under the clauses in question. Nevertheless, the necessity of revising extensively the seniority rolls, the resulting re-shuffling of employees who have been transferred and promoted on the basis of seniority they acquired under the clauses, the flood of grievances that would result and the unrest that would ensue, not to mention the necessity of defending what would be in effect hundreds of thousands of separate suits, would impose staggering and intolerable hardships on the employers, as well as upon the unions.

More important than all this, however, would be the effect of the decision were this Court to allow it to stand, upon the system of collective bargaining in our country. We believe, and we shall show *infra*, that the effect would be to torpedo the National Labor Relations Act and the scheme of collective bargaining that it sets up.

Reasons for Granting the Writ.

We concur, for the most part, in the arguments the petitioner herein presents. We wish to emphasize, however, the following further considerations that the Court of Appeals did not take into account and that, we believe, require reversing its judgment:

1. The ruling of the Court of Appeals undermines the whole scheme of the National Labor Relations Act, and would make impracticable, if not impossible, the collective bargaining that the Act contemplates and requires. The remedy of the respondent employees lies in proceedings in their own union to bring about a change in the seniority clauses, or in proceedings under the National Labor Relations Act to change their bargaining representatives, not by collateral attack in court on a long-standing, lawful clause of the contracts.
2. The Court of Appeals apparently, and erroneously, conceived this case to present a conflict of interest between employee veterans who worked for Ford before entering the armed forces and employee veterans who did not work for Ford before entering those forces. In truth, conflicts, to the extent that they exist, are between (1) non-veteran employees and employee veterans who worked for Ford before entering the armed forces and (2) employee veterans who did not previously work for Ford, and between members of group (2) themselves.

nize the exclusive representatives, must bargain with them and must try earnestly to reach agreement. *Labor Board v. Sands Mfg. Co.*, 306 U. S. 332 (1939).

Congress imposed no limits on the scope of bargaining, or on the subjects concerning which employers and unions may bargain, or on the bargains they may reach, except one. The exception is that neither may use the bargain, otherwise than by agreeing to a valid clause compelling membership in the union, to so discriminate among employees as to encourage or discourage membership in a labor organization, or to bring about the discharge of employees for union activity. See, for example, *Wallace Corp. v. Labor Board*, 323 U. S. 248 (1944).

This Court has held that, in certain circumstances, a union may not enter into a bargain that discriminates against employees solely by reason of their race. *Steele v. L. & N. R. Co.*, 323 U. S. 192 (1944). Bargains under the National Labor Relations Act may not violate other laws, such as certain inhibitions of the Anti-Trust Laws. See: *Allen-Bradley Co. v. Local Union No. 3*, 325 U. S. 797 (1944).

Aside from these limits, Congress allowed to collective bargainers the utmost latitude in selecting the subjects on which they would bargain and deciding on the terms of their bargains.

This was necessary under the scheme that Congress set up. It would be anomalous indeed for Congress to give to a union on the one hand exclusive power to bargain for an appropriate unit of employees, and to require an employer, on the other, to bargain with that union, and yet to say, as the Court of Appeals

would have it say, that the fairness of the bargain and its validity must await a ruling from some Court or other body. If this had been the intent of Congress, Congress would have said so, as the laws of some countries have said, in requiring collective bargainers to submit their agreements to government agencies for approval.

If the law is as the Court of Appeals says it is, then the National Labor Relations Act does not mean what its language clearly says and what the courts without exception have held it says. If the Court of Appeals is correct, then the union is not the exclusive representative of employees, but merely a preliminary negotiator, with the courts holding the final and exclusive power to say ultimately what the bargain may be. The employer, in this event, although required to bargain in good faith, can never know that the bargain he reaches will be valid; the law forces him to go through an always serious, often difficult and sometimes painful ordeal without assuring him that any individual employee, through the courts, may not upset the arrangements on which he and the "exclusive" representative agreed and that, presumably, the majority of the members ratified.

The Court of Appeals uses the word "discriminate" as though, in all cases, discrimination is evil. This is not so, either in law or in common usage. Webster's International Dictionary, Second Edition, says to discriminate means:

"To serve to distinguish; to mark as different, to differentiate.

"To separate (like things) one from another in comprehension or use by discerning minute differences.

"To make a distinction; to distinguish accurately; as to discriminate between fact and fancy; also to use discernment.

"To make a difference in treatment or favor (of one as compared with others); as to discriminate in favor of one's friends; to discriminate against a special class."

The Court of Appeals seems to assume that discriminating inherently involves differentiating improperly. "Discriminate" alone is ambiguous. Unless we know the grounds of the discriminating, we cannot judge whether it is proper or improper. Differentiating in good faith, not in a way that the law forbids or in a way that interferes with inherent rights, is not improper. There is no question here of good faith. Nor is there one of inherent rights. The contracts in question created the seniority rights of all the employees. Those rights existed, and they exist now, only by virtue of the contracts. In the absence of a clear showing of the one kind of discriminating that the National Labor Relations Act forbids, the plaintiffs may not complain now on the basis of other or different rights they may have had under earlier contracts or could have had under different contracts.

Any union that represents a large unit of employees, employed in many crafts and classifications, many departments, many plants, in many localities and different circumstances, has the difficult problem of reconciling differences in the interests of many classes and groups.

It is in the union's interest as best it may to reconcile these differences, and to accommodate its policies and practices to the differing and sometimes conflict-

ing interests of various classes or groups that comprise the bargaining unit, or who may become members of the unit. In doing this, it must weigh the effect on itself of what it does that is to the greater or lesser advantage of one group or class as against another; and it must weigh the effect of what it does on the solidarity of the unit and on the bargaining strength that flows from that solidarity. It is interested in holding itself together and in holding to the greatest extent possible the loyalty of all elements of the unit. Bitter dissidence in a small group it may deem more destructive of its solidarity and bargaining strength than mild disappointment in a larger one.

In the absence, at any rate, of a clear showing of fraud or bad faith on the part of the union's bargain-ers, what justification is there under the National Labor Relations Act or any other law, or in common sense, for a court or other branch of the Government to substitute its judgment for the union's on what is best for the union as a whole?

A particular group of employees, such as skilled employees comprising a third of a unit, may feel strongly that they are entitled to a greater wage increase than other employees. If, in order to retain their loyalty, the union negotiates a 5-cent an hour increase for other employees and an 8-cent an hour increase for them, instead of a 6-cent an hour increase for everyone, calling upon the majority to make a sacrifice for the minority, may a court at the instance of an individual or of dissident members of the majority substitute its judgment for that of the union and set aside the contract?

And does an employer who agrees to this arrangement at the instance of an exclusive representative

with which the law compels him to deal accede to the union's demands at his peril?

May a union and an employer agree to differing terms and conditions of employment for various elements of a bargaining unit only if they can show to the satisfaction of a court, by tangible, objective standards and measurable and measured criteria, that differing circumstances of each group justified different terms for it, and that the agreement in its entirety was for the benefit of the union as a whole?

The Court of Appeals ignores the practice of unions to submit their proposed collective agreements to their members to ratify. In the present case, it was entirely foreseeable that the clause in question could affect adversely the interests of the great majority of Ford's employees, consisting of employees who were not veterans and those who left Ford for the armed services and thereafter returned to work. May a dissident minority, or even a majority of the present employees now, years later, reverse the majority that approved the clause and set aside all that the parties did under it?

If these things are so, the collective bargaining that the law compels becomes a lottery, in which bargainiers must await the outcome of trials perhaps years later to know what their agreement was, or a strait-jacket, in which one cannot safely agree to any differences, as between different groups, as to the terms of employment. It certainly would not be a method of fostering industrial peace.

Petitioner has shown that there are many types of seniority systems, by craft or classifications,

by departments, by plants or by companies, and that there are different combinations of these systems, departures from them and exceptions to them.

We have seen that courts repeatedly have held it within the power of bargaining representatives to negotiate seniority rules and to change the rules from time to time, notwithstanding that the changes affect for better or worse the then current standing of particular individuals or groups. See: *Aeronautical Industrial District Lodge 727 v. Campbell; et al.*, 337 U. S. 521 (1949); *Hartley v. Brotherhood of Railway and Steamship Clerks, etc.*, 283 Mich. 201, 277 N. W. 885 (1938).

We shall not labor this point, except to say that most seniority systems set up an artificial standard for favoring one employee as against others, substituting the accident of the time when each entered a seniority group for other considerations, even more valid ones, in preferring them. Seniority, by its nature, invariably works in favor of one employee as against another.

In great establishments, there is no system of seniority that in and of itself is naturally or necessarily correct, or that affords an inflexible standard by which to measure the correctness of the system. Seniority is a matter of agreement in the light of the circumstances, and it is changed by agreement from time to time in the light of then existing circumstances. It always involves a precise differentiating of groups and individuals in the light of circumstances at the time.

As the end of World War II approached, unions and employers foresaw the influx into the plants of

veterans as new employees, as women and elderly people resumed their peacetime pursuits. • What considerations led unions to include in their contracts clauses crediting veterans who had not worked for particular employers with standing for seniority from the time they entered the armed forces are not of record. The safest thing to assume is that the unions did not think it wise to have in the plants cohesive, vocal, and dissident minorities whose dissatisfaction with their standing under the seniority rules might disrupt the unions and weaken their bargaining position. The Selective Training and Service Act (50 U. S. C. App. Sec. 308) assured all veterans who returned to work full seniority credit for time they spent in the armed forces. Whom does the law empower to judge and who, indeed, is best qualified to judge the validity of the claim of non-employee veterans that they, too, should receive seniority credit for all time they spent in the armed services? And whom does the law empower to judge, and who is best qualified to judge, the effect upon the union as a whole of recognizing or denying this claim?

As between a court and a bargaining agent that the law says is "exclusive" and whom the employer must recognize as such, we submit that the court easily comes out second.

Irrelevant here is the ruling of this Court in *Steel v. L. & N. R. Co.*, 323 U. S. 192 (1944). In that case, Negroes whom the union excluded as members and against whom it discriminated because of their race had no voice in its affairs. Mr. Justice Douglas emphasized this circumstance at pages 199-202. Here, membership in the respondent union was available to

all the plaintiffs. Indeed, the complaint alleges they are members (R. 3).

They and the classes they purport to represent, like all other employees, had full opportunity, when the union was considering the clauses in question and when the question of ratifying was before them, to present their views and to protect what they considered their interests. They have the right now, through proper procedures within their union, to seek a change in the seniority rules. Or they have the alternative right under the National Labor Relations Act to change their bargaining representative or to vote for no representative.

We submit that, if their claims are valid, it is to these procedures under the National Labor Relations Act that plaintiffs must resort, and it is to them that this Court must compel them to resort if collective bargaining as we have known it since 1935, and for many years before, is to survive.

II.

The Court of Appeals apparently, and erroneously, conceived this case to present a conflict of interest between employee veterans who worked for Ford before entering the armed forces and employee veterans who did not work for Ford before entering those forces. In truth, conflicts, to the extent they exist, are between (1) non-veteran employees and employee veterans who worked for Ford before entering the armed forces and (2) employee veterans who did not work for Ford, and between members of group (2), themselves.

The opinion of the Court of Appeals says (R. 34):

"The question squarely presented is whether the union and management can by contract create preferential seniority in men not employed when they entered the armed services as against men, also veterans, who were employed when they entered the armed services."

Throughout the remainder of the opinion, the Court adheres to this view of the question.

But the class on behalf of which the plaintiffs sue consists of all employees, veterans and non-veterans alike, whose

"positions on the seniority roster at Ford's Louisville Works have been lowered on said seniority roster to positions lower than * * * their true hiring-in dates would entitle them by reason

of the contract clause of whose validity complaint is made herein" (R. 5).

Thus, the class includes non-veterans and veterans who formerly worked for Ford. It includes also veterans not previously employed by Ford whose service in the armed forces began after the beginning of such service of other veterans who later were employed by Ford.

Thus, the clause differentiates as between members of the very class that the respondent employees claim it favors.

This shows that the clause does not "discriminate" in favor of veterans as against non-veterans, or in favor of one class of veterans as against another. What it does is to give all veterans what the law gives to some: credit for time they spent in the armed forces.

It shows, also, that only a small minority can benefit from the clause, and that, if the majority do not wish to sacrifice any part of their seniority standing for this minority, they should correct the claimed disadvantage by normal procedures, not by litigating.

CONCLUSION.

We submit that the issue this case involves is of such great public importance and has such wide-reaching ramifications that this Court should determine it.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 193

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FORD MOTOR COMPANY,

Petitioner,

v.

GEORGE HUFFMAN, individually and on behalf of a class,
etc., and INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA, CIO,

Respondents.

**BRIEF OF BRIGGS MANUFACTURING COMPANY,
AMICUS CURIAE, IN SUPPORT OF THE PETI-
TION OF FORD MOTOR COMPANY FOR A WRIT
OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT.**

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BRIEF OF BRIGGS MANUFACTURING COMPANY, *AMICUS CURIAE*, IN SUPPORT OF THE PETI- TION OF FORD MOTOR COMPANY FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Briggs Manufacturing Company, as *amicus curiae*, sub-
mits this brief in support of the petition of Ford Motor
Company for a writ of certiorari. Briggs has obtained the
consent of all of the parties to the submission of this brief
pursuant to Subdivision 9 of Rule XXVII of the Rules of
this Court.

Opinions Below.

The order of the District Court is unreported (R. 26).
The opinions of the Circuit Court of Appeals are reported
in 195 F. 2d 170.

Interest of *Amicus Curiae*

Briggs Manufacturing Company manufactures automobile bodies and related parts such as metal stampings, interior trim and plastic panels and moldings. The Company also manufactures aircraft assemblies, plumbing fixtures and fittings, vitreous china, paints and refinishing materials. It employs over 30,000 people in plants located in four states. The respondent Union is the exclusive bargaining agent for most of these employees.

In May, 1946, the Union notified Briggs that the membership of one of its Locals had voted to take strike action against the Company. One of the demands upon which this strike vote was predicated was that new employees who were war veterans be granted seniority effective as of the date of their entry into the service.

On July 19, 1946, the Union and Briggs executed a supplemental agreement containing veterans' seniority provisions similar to those later incorporated in the agreement between Ford and the Union. Those provisions stated in part:

- "(2). Any veteran of the present war who was not employed by any person or company at the time of his entry into the military service of the Armed Forces or the Merchant Marine of the United States and who is a citizen of the United States and served with the Allies and who is hired by this Company after he is relieved from training and service in the Armed Forces or after completion of service in the Merchant Marine, shall upon having been employed for ninety (90) days and not before received seniority credit for the period of such service subsequent to January 1, 1941, provided:
-

"(3). It is further understood and agreed that all veterans in the employ of the Company at the time of this Agreement shall receive the same rights and privileges under this Agreement as if it had been in existence on the date of their first employment with the Company."

This agreement remained in effect until August 26, 1949, at which time it was terminated by Briggs and the Union without prejudice to seniority credits already acquired thereunder.

Briggs estimates that over 1400 of its present employees, who had not worked for the Company prior to their entry into military service, have acquired seniority credits pursuant to the agreement of July 19, 1946, and that at least an equal number of veterans who are no longer with the Company have enjoyed the benefits extended by that agreement.

At the present time 13,493 Briggs employees have seniority dating from and after January 1, 1941, and are, therefore, affected by the above agreement. Due to the large turnover, particularly among newer employees, it would be impossible to determine the total number of persons who, at one time or another, have been affected by these veterans' seniority provisions, without making a detailed examination of the records of every person employed by the Company subsequent to January 1, 1941.

The revision of its seniority list dating back to 1941 and covering thousands of employees, which would be required by the application of the Court of Appeals decision, would impose a tremendous burden upon Briggs. Employees who have gained seniority rights would find their positions entirely changed; many would be transferred, others demoted and still others would be laid off. Inevitable unrest among the union membership and a flood of grievances would result from such a revision.

Of equal importance is the possibility of a multiplicity of lawsuits for damages against both the Union and employers. Two such actions have been filed already and if the Court of Appeals' decision is not reversed that number will undoubtedly increase to such an extent as to become an unreasonable burden not only on the union and employers but on the courts as well.

Reasons for Granting the Writ

In addition to concurring in the reasons for granting the writ presented by the petitioner, we wish to present an additional consideration which the Court of Appeals failed to take into account and which we believe requires a re-examination and reversal of its judgment.

The refusal of the Court of Appeals to recognize the right of Ford and the U.A.W.-C.I.O. to contract to give all veterans employed by Ford full seniority credit for the time they devoted to the service is apparently based upon the erroneous assumption that the application of such a contract would prefer veterans without actual experience to veterans with actual experience and the equally erroneous assumption that the seniority system in effect prior to the contract permitted no such alleged inequity or discrimination.—

The Court held that the contract was invalid because (R. 38)

"Plainly, a contract which, in the case of lay-off, prefers men without experience over men with experience, no other facts appearing and no other valid reasons for preference existing, is discriminatory. When an employee who entered the Ford Plant in 1945 is retained in lay-offs over Huffman who entered in 1943, Huffman is discriminated against."

The Court, in effect, holds that a seniority system which fails to recognize actual employment experience is inherently unjust unless some valid reason for this failure exists. It then apparently assumes that the veteran who was first hired by the company will necessarily or even usually have most actual work experience. The assumption obviously ignores the fact that an employee may have entered the armed forces within a matter of days or weeks after he was first employed by Ford and remained in the service many months after other veterans had returned and resumed, or in the case of new employees begun, their employment with Ford. It is apparent that a veteran who did not work for Ford prior to his entry into military service, as well as other veterans who did work for Ford, may have much more actual experience than the veteran who was employed by Ford for a short period prior to his military service. Under the provisions of Section 8 of the Selective Service and Training Act of 1940, the veteran who was employed by Ford prior to his entry into the service is, in every case, preferred over the veteran who was not, despite the fact that the former may have less actual work experience. This is because that Act gives the veteran who was employed before he entered the service seniority or experience credit equal to the time he spent in the service and does not give such credit to the veteran who was not so employed. This results in an inevitable discrimination against the more experienced veteran who, because of the intervention of World War II, never had a chance to work.

In answer to the question of why this injustice cannot be corrected by collective bargaining agreement giving all veterans seniority credits for the time they spent in the service, the Court of Appeals stated (R. 38)

"This is a case *sui generis*. From a feeling of generosity toward men called to the war, the union and the employer have united in a sweeping contract which ultimately and in ways probably not contemplated discriminates against veterans who also gave their all in the service of the country."

It is evident from the Court's opinion that the discrimination it condemns is the fact that the agreement will not, in every case, assure that the veteran with the greatest actual working experience is retained in case of lay-off. The Court fails to recognize that the same defect was inherent in the seniority system before the collective bargaining agreement under the Selective Service and Training Act of 1940.

We are unable to comprehend how a contract which corrects the obvious inequity between veterans by giving all veterans seniority credits measured by exactly the same standard, that is, the duration of their service to the country, can be described as discriminatory because it may incidentally prefer a veteran with less actual working experience. We submit that the obvious justice of treating all veterans employed by Ford by the same standard is ample reason for failure of that seniority system to recognize actual employment experience in every case.

7

Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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August 28, 1952.

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**BRIEF OF THE ELECTRIC AUTO-LITE COMPANY,
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IN THE
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The Electric Auto-Lite
Company, Amicus Curiae.

SUMMARY

I.

The Provision In Question Does Not Violate Section 8 of the Selective Training and Service Act of 1940, as amended, 50 U. S. C. App., Sec. 308.

II.

The Provision In Question Does Not Violate the National Labor Relations Act, as amended, 29 U. S. C., Sec. 141, *et seq.*

- A. The Provision In Question Does Not Violate Section 157 of the Act.
- B. The Provision In Question Does Not Violate Section 158 of the Act.
- C. The Provision In Question is the result of collective bargaining authorized by Section 159 of the Act.

III.

The Circuit Court Has Failed to Rule on The Status of Non-veterans in Huffman's Class.

IV.

The Provision In Question Is Consistent With Sound Public Policy.

ARGUMENT

I.

The Provision in Question Does Not Violate Section 8 of The Selective Training and Service Act of 1940, as amended, 50 U. S. C. App. Sec. 308.

Both the United States Circuit Court for the Sixth Circuit and the District Court of the United States for the Western District of Kentucky have overruled Huffman's contention that the provision of the collective bargaining agreement under consideration violates the rights of veterans previously employed by Ford on the alleged grounds that such rights are protected under the Selective Training and Service Act of 1940, 50 U. S. C. App., Sec. 308 (R. 32-33).

H.

The Provision In Question Does Not Violate The National Labor Relations Act, as amended, 29 U. S. C., Sec., 141 *et seq.*

The basic question which remains is whether such provision granting seniority to veterans of World War II, who were not previously employed by Ford, equal to their terms of military service, is discriminatory and therefore invalid within the meaning of the National Labor Relations Act, as amended, 29 U. S. C., Sec. 141, *et seq.* It is our contention that for the Court to hold the seniority provision discriminatory it must find that same violates Section 157 or 158. It is our conclusion that these Sections were not violated in the instant case for the reasons hereinafter stated, and further that the said seniority provision is authorized under Section 159 of the Act.

A. The Provision In Question Does Not Violate Section 157 of the Act.

The Circuit Court has ruled that the discrimination complained of by Huffman arises under Sec. 157 of the Na-

tional Labor Relations Act, 29 U. S. C., Sec. 157 (R. 36).

Section 157 provides as follows:

"157. Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 158(a) (3) of this title."

Section 157 gives employees the right to self organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection. Referring to the provisions of Section 157, the Circuit Court has explained "This means that in entering into labor contracts the bargainners must make their agreements with a view to the rights of the entire group bound by them, and not enter into agreements which discriminate against one part for the benefit of another." (R. 36). We do not agree with the Court's interpretation.

The purpose of Section 157 is to permit employees to organize, select bargaining units, and to engage (or refrain from engaging) in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. *N. L. R. B. vs. Red Arrow Freight Lines*, 180 F. 2d 585, certiorari denied, 340 U. S. 823; *N. L. R. B. vs. Thompson Products*, 162 F. 2d 287; *Nierotko vs. Social Security Board*, 149 F. 2d 273, certiorari granted, 327 U. S.

358; *N. L. R. B. vs. Century Oxford Manufacturing Corporation*, 140 F. 2d 541; certiorari denied, 323 U. S. 714; *N. L. R. B. vs. Sun Shipbuilding & Dry Dock Company*, 135 F. 2d 15. *De Bardeleben vs. N. L. R. B.*, 135 F. 2d 13; *N. L. R. B. vs. Newark Morning Ledger Co.*, 120 F. 2d 262, certiorari denied, 314 U. S. 693. The case at bar lacks any of the elements which would constitute a violation under Section 157. Nowhere in the petition is there any allegation that Huffman's rights to form, join, or assist labor organizations has been interfered with nor does he contend that there has been any interference with his rights to engage in any concerted activities for the purpose of collective bargaining or other mutual aid or protection.

B. The Provision In Question Does Not Violate Section 158 of the Act.

We now turn to Section 158 of the National Labor Relations Act, 29 U. S. C. 158, the pertinent parts of which read as follows:

"Sec. 158. Unfair Labor Practices

(a) It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 157 of this title:

(2) * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

(b) It shall be unfair labor practice for a labor organization or its agents—

- (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 157 of this title: * * * or (B) an employer in the selection of his representatives for the purposes of collective bargaining for the adjustment of grievances;
- (2) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section * * *

We have already shown (*supra*)^a that there has been no violation of Section 157. Accordingly, we shall omit consideration of Subsections 158(a)(1) and 158(b)(1) since they refer to the rights granted employees under Section 157. This Court's attention is, therefore, respectfully directed to the provisions of Subsections 158(a)(3) and 158 (b)(2).

Subsection 158(a)(3) makes it an unfair labor practice for an employer *to encourage or discourage membership in any labor organization* by discrimination in regard to hire or tenure of employment or any term or condition of employment; subsection 158(b)(2) makes it an unfair labor practice for a labor organization to cause an employer to violate the foregoing subsection. It is obvious that the purpose or effect of the seniority clause in question was not to encourage or discourage membership in any labor organization and it, therefore, does not violate subsections 158(a)(3) or 158(b)(2), or justify the finding of discrimination under these subsections.

In a sociological sense, the term "discrimination" refers most often to the various forms of inequality of treatment which are provoked by racial or religious feeling. In the law of labor relations, the term most often refers to inequality of treatment based upon the desire of employers to discourage free employee organization for collective bargaining purposes.

The National Labor Relations Act does not purport to infringe upon the traditional prerogatives of employers to select, lay off or discharge his employees. The only limitations established by the Act is that employees may not be discriminated against because of their union activities or affiliations. *N.L.R.B. vs. Reliable Newspaper Delivery, Inc.*, 187 F. 2d 547; *N.L.R.B. vs. Sandy Hill Iron & Brass Works*, 165 F. 2d 660; *Stonewall Cotton Mills vs. N.L.R.B.*, 129 F. 2d 629, 632; *Montgomery Ward & Company vs. N.L.R.B.*, 107 F. 2d 555, 564; *Link-Belt Co. vs. N.L.R.B.*, 311 U.S. 584; *Bradford Dyeing Assn. vs. N.L.R.B.*, 310 U.S. 318; *Consolidated Edison Co. vs. N.L.R.B.* 305 U.S. 197; *Santa Cruz Fruit Packing Co. vs. N.L.R.B.*, 303 U.S. 453; *Associated Press vs. N.L.R.B.*, 301 U.S. 103; *Friedman-Harry Marks Clothing Co., Inc. vs. N.L.R.B.*, 301 U.S. 58; *Fruehauf Trailer Co. vs. N.L.R.B.*, 301 U.S. 49; *Jones & Laughlin Steel Corp. vs. N.L.R.B.*, 301 U.S. 1.

There is an absence of any allegation in the petition (R. 2-9) to the effect that Ford discriminated against Huffman, or those of his class, in regard to hire or tenure of employment of any term or condition of employment "to encourage or discourage membership in any labor organization"; nor does the petition contain any allegation that UAW-CIO caused or attempted to cause Ford to discriminate against Huffman, or those of his class, in violation of Subsection 158(a)(3). It follows that neither Huffman, nor those of his class, have any statutory basis for claiming that their seniority has been impaired.

C. The Provision In Question Is the Result of Collective Bargaining Authorized By Section 159 of the Act.

Seniority rights are not vested rights. Seniority is not an "inherent" right, protected by the common law or

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**BRIEF OF THE ELECTRIC AUTO-LITE COMPANY,
AMICUS CURIAE, IN SUPPORT OF PETITIONS FOR
WRIT OF CERTIORARI**

This brief of The Electric Auto-Lite Company, *amicus curiae*, is being filed with the consent of all of the parties to this action under subparagraph 9(b) of Rule 27, of this Court.

The Electric Auto-Lite Company is one of the defendants in a similar action now pending in the United States District Court for the Northern District of

Ohio, Western Division. That action is based upon seniority provisions of a collective bargaining agreement like those under consideration in the case at bar. If the decision of the United States Court of Appeals for the Sixth Circuit is allowed to stand, the rights of thousands of the employees of The Electric Auto-Lite Company will be affected.

JURISDICTION

This Court has jurisdiction to review the case at bar by virtue of the provisions of 28 U. S. C., Sec. 1254(1).

QUESTION PRESENTED

Is a collective bargaining agreement discriminatory within the meaning of the National Labor Relations Act, as amended, if it grants seniority credits to Veterans of World War II for military service performed prior to employment providing they were not employees of any other person or company at the commencement of their military service?

STATUTES INVOLVED

National Labor Relations Act, as amended, 29 U. S. C., Sections 157, 158 and 159.

Selective Training and Service Act of 1940, as amended; 50 U. S. C. App. Sec. 308.

(See Appendix "A")

SPECIFICATION OF ERRORS

The United States Court of Appeals for the Sixth Circuit erred in the following respects:

1. In holding that the provision in the collective bargaining agreements granting seniority to veterans not previously employed by Ford is discriminatory and therefore invalid under Section 157 of the National Labor Relations Act, as amended.

2. In failing to accurately define and rule as to the status of all persons included in "Class A."

3. By failing to recognize that the seniority granted to veterans not previously employed by Ford is consistent with sound public policy.

4. In reversing the summary judgment granted by the District Court.

STATEMENT OF FACTS

On July 30, 1946 the Ford Motor Company (hereinafter referred to as "Ford") and the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO (hereinafter referred to as "UAW-CIO") entered into a collective bargaining agreement which contained the following provisions (R. 14-15):

"(c) Any veteran of World War II who was not employed by any person or company at the time of his entry into the service of the land or naval forces or the Merchant Marine and who is a citizen of the United States and served with the allies and who has been honorably discharged from such training and service and who is hired by the company after he is relieved from training and service in the land or naval forces or after completion of service in the Merchant Marine shall, upon having been employed for six (6) months and not before, receive seniority credit for the period of such service subsequent to June 21, 1941"

"(d) It is further understood and agreed that, regardless of any of the foregoing, all veterans in the employee (sic) of the company at the time the Contract is thus amended shall receive seniority credit for their period of service, subsequent to

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June 21, 1941, in the land or naval forces or Merchant Marine of the United States or its allies, upon completion of their probationary period."

Identical provisions were contained in a subsequent agreement between the same parties dated August 21, 1947 (R. 17-18). A third agreement dated September 28, 1949, preserved to all veterans then employed by Ford the seniority rights accorded them in 1946 and 1947 agreements (R. 21).

George Huffman, the respondent herein, (hereinafter referred to as "Huffman") was first employed by Ford on or about September 23, 1943 (R. 6) and thereafter became a member of UAW-CIO (R. 3). He was inducted into the military service of the United States on November 18, 1944, and was discharged therefrom on July 1, 1946 (R. 6). He was re-employed by Ford with his seniority unimpaired in accordance with the provisions of Section 8 of the Selective Training and Service Act of 1940, as amended, (50 U.S.C. App. Sec. 308) (R. 6-7).

On February 21, 1951, Huffman filed a petition in the United States District Court for the Western District of Kentucky for a declaratory judgment, "individually, and on behalf of the class (hereinafter defined and described) of which he is a member." (R. 2.) The class is described as the plaintiff and approximately 275 other employees at the Louisville, Kentucky plant whose positions on Ford's seniority roster have been allegedly lowered due to the operation of the said provisions of the collective bargaining agreement quoted above (R. 5). The class is not limited to veterans. The description in the petition of the class is comprehensive enough to include non-veterans as well as veterans. Amongst other things the prayer in the petition asked the District Court to declare the provisions of the collective bargaining agreement

quoted above null and void and to order Ford to revise its seniority roster.

Decision of District Court

Upon motions for summary judgment by Huffman (R. 10), UAW-CIO (R. 22) and Ford (R. 25) the District Court dismissed Huffman's petition (R. 26), holding as follows:

" . . . that the collective bargaining agreement expresses an honest desire for the protection of the interests of all members of the Union and is not a device of hostility to veterans. . . . that said collective bargaining agreement sets up a seniority system which the Court deems not to be arbitrary, discriminatory or in any respect unlawful."

Decision of Court of Appeals

The United States Court of Appeals for the Sixth Circuit reversed the judgment of the District Court and remanded the case for further proceedings, 195 F. 2d 170 (R. 29). The majority opinion, written by Judge Allen and concurred in by Judge Hicks, held the collective bargaining agreement invalid as to Huffman and those veterans similarly situated (R. 38). Judge McAllister wrote the following dissenting opinion (R. 38):

"I am of the opinion that the order of the district court dismissing appellant's petition should be affirmed for the reasons, as therein set forth, that the collective bargaining agreement expressed an honest desire for the protection of the interests of all members of the union; that it was not a device of hostility to veterans; and that the seniority system therein provided was not arbitrary, discriminatory, or unlawful."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. 193 and No. 194.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO,
An Unincorporated Voluntary Association, and FORD
MOTOR COMPANY, *Petitioners*,

v.

GEORGE HUFFMAN, Individually, and on behalf of a
class, etc., *Respondents*.

On Petition for a Writ of Certiorari To The United States
Court of Appeals for the Sixth Circuit.

MOTION FOR LEAVE TO FILE A BRIEF AS
AMICUS CURIAE

VETERANS OF FOREIGN WARS OF
THE UNITED STATES,
Amicus Curiae.

JOHN C. WILLIAMSON,
Counsel.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1952.

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INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND
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MOTOR COMPANY, *Petitioners*,

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class, etc., *Respondents*.

On Petition for a Writ of Certiorari To The United States
Court of Appeals for the Sixth Circuit

**MOTION FOR LEAVE TO FILE A BRIEF AS
AMICUS CURIAE**

To the Honorable, the Chief Justice of the United States
and the Associate Justices of the Supreme Court of
the United States:

Now comes the Veterans of Foreign Wars of the United
States and respectfully moves this Court, pursuant to Rule
27, paragraph 9, of the Rules of this Court, for leave to file
the accompanying brief in this case *amicus curiae*. The
consents of the attorneys for the petitioners herein to the

the Constitution, but a right only when it is established by contract, or by statute in particular cases (e. g., the servicemen's reemployment statutes). Formally and enforceably seniority today is the product of collective bargaining agreements made between unions and employers. The Courts have held that seniority rights established in one agreement may be altered or amended by a later agreement. *Woolridge et al. vs. Denver & Rio Grande Western R.R. Co.*, (1948), 118 Colo. 25, 191 Pac. (2d) 882. These principles have been recognized by this Court in *Aeronautical Industrial Lodge 727 vs. Campbell*, 337 U.S. 521, as follows:

"Barring legislation not here involved seniority rights derive their scope and significance from union contracts, confined as they almost exclusively are to unionized industry. See *Trailmobile Co. vs. Whirls*, 331 U.S. 40, 53, n. 21. There are great variations in the use of the seniority principle through collective bargaining bearing on the time when seniority begins, determination of the units subject to the same seniority, and the consequences which flow from seniority. All these variations disclose limitations upon the dogmatic use of the principle of seniority in the interest of the ultimate aims of collective bargaining. Thus, probationary conditions must often be met before seniority begins to operate; sometimes it becomes retroactive to the date of employment; in other instances it is effective only as from the qualifying date; in some industries it is determined on a company basis, in others the occupation or the plant is taken as the unit for seniority determination; sometimes special provisions are made for workers in key positions; and then again these factors are found in varying combinations."

Section 159 National Labor Relations Act, as amended,

29 U.S.C., Sec. 159, made seniority a subject of bargaining between Ford and the Union when it provided:

"(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * * ."

As the result of such collective bargaining the contracts gave veterans, not previously employed by Ford, seniority credit for military service, provided they were not employees of any other persons or companies at the time of entry into the armed forces.

Seniority credits to former employees of Ford for time spent in military service is required by Federal Statutes. Seniority credits for military service to veterans not previously employed by Ford have been granted through the process of collective bargaining. This was a good-faith attempt by Ford and UAW-CIO to adjust seniority credits to a place where they would have fallen had it not been for the abnormal conditions created by World War II. It is no more discriminatory to make the assumption that a post-service employee would have obtained employment at Ford had it not been for his military service, and to recognize seniority thereon, than it is to assume that the former employee would have continued to work for Ford during the entire time of his military service and to pass a statute requiring recognition of seniority credits on such service.

This Court ruled in the *Aeronautical Industrial District Lodge* case (*supra*) that a collective bargaining agreement giving top seniority to union chairmen in the event of layoffs was non-discriminatory. Such difference in

treatment of employees was held to be valid. Other courts have also held that differences in treatment of some segments of unions as compared with others do not in themselves constitute statutory discrimination. *Fries vs. Pennsylvania R.R. Co.*, 195 F. 2d 445; *Foster vs. General Motors Corporation*, 191 F. 2d 907; *Britt vs. Trailmobile Company*, 179 F. 2d 569, certiorari denied, 340 U.S. 820; *Haynes vs. United Chemical Workers, CIO*, 190 Tenn. 165, 228 S.W. 2d 101; *Schlenk vs. Lehigh Valley R.R. Co.*, 74 F. Supp. 569. Certainly any incidental differences of treatment between employees that may occur in the adjustment of a seniority system to eliminate from it inequities which have been caused by abnormal conditions must be upheld under such holdings.

III

The Circuit Court Has Failed To Rule On The Status Of Non-veterans In Huffman's Class

The petition does not limit the class represented by Huffman to veterans employed by Ford prior to their entry in the armed forces (R. 5). Paragraph 9 of the petition describes the persons in "Class A" as Huffman and approximately 275 other employees of Ford's Louisville, Kentucky, plant. It does not specify that all those persons were veterans. The description is broad enough to include non-veterans.

Throughout its opinion the Circuit Court has left the impression that the provision in the collective bargaining agreements was discriminatory as to veterans only.

For instance, the Court said (R. 34): "The question squarely presented is whether the union and management can by contract create preferential seniority in men not employed when they entered the armed services as against

men, also veterans, who were employed when they entered the armed services."

The Court also said (R. 36): "No evidence was presented on the question but we assume that both the union and Ford, in executing this bargaining contract, had a well-meaning desire to protect veterans who had had no chance for employment prior to their service in the armed forces. But in so doing they clearly discriminated against other veterans who had entered the military service when already employed by Ford."

At the end of its opinion the Court said "The contract is invalid as to Huffman and those veterans similarly situated."

It has already been pointed out (*supra*) that the Circuit Court has ruled that the provision in the collective bargaining agreement under consideration was not violative of Huffman's rights under the Selective Training and Service Act of 1940, as amended. If that is the case, what did the Circuit Court have in mind when it held that the agreement was invalid "as to Huffman and those veterans similarly situated"? What about the status of non-veterans in Huffman's class? Since the Court based its finding of discrimination on the National Labor Relations Act, it would appear that there should be no distinction between claims of veterans as compared to those of non-veterans. Nothing in the Act seems to warrant such a distinction. Because of the vast importance of the case at bar, this Court should answer the questions raised under this sub-heading, otherwise the confusion will generate considerable litigation in the future.

IV.

The Provision In Question Is Consistent With Sound Public Policy

Congress has in many instances enacted laws granting veterans benefits based on their service in the armed forces. The reemployment benefits in the Selective Training and Service Act has been discussed (*supra*). The Universal Military Training and Service Act, 50 U.S.C. App., Sections 451-473 contains similar reemployment provisions. Other acts conferring special benefits upon veterans are the Veterans' Preference Act, 5, U.S.C., Sections 851 to 859, and the Servicemen's Readjustment Act, 38 U.S.C., Sections 693 et seq. Under the Veterans' Preference Act, in addition to granting extra points to veterans in civil service examinations, such preferences are extended to their wives, widows and mothers under certain circumstances.

It is needless to indulge in a discussion of the merits of the laws passed for the benefits of men and women who have sacrificed their time and opportunity and have risked their lives in the service of their country. No doubt these thoughts motivated Ford and UAW-CIO to extend seniority rights to veterans not previously employed. The Circuit Court recognized that both Ford and the Union, in executing the agreements under consideration, probably had a well-meaning desire to protect veterans who had had no chance for employment prior to their service in the armed forces (R. 36).

Another factor which must have induced the Company and the Union to include the provision in question in their collective bargaining agreements was the bulletin issued October 7, 1940 by the Retraining and Reemploy-

ment Administration of the U. S. Department of Labor. In its Statement of Employment Principles the Administration urged the allowance of seniority credit to newly hired veterans for the purpose of job retention equal to their time spent in the armed services. This recommendation appeared in the following language:

"13. Newly hired veterans who have served a probationary period and qualified for employment should be allowed seniority credit, at least for purposes of job retention, equal to time spent in the armed services plus time spent in recuperation from service-connected injuries or disabilities either through hospitalization or vocational training."

The foregoing legislative and administrative history establishes beyond doubt that the seniority credit principles incorporated in the Ford contracts were based on sound public policy and should not have been adjudged discriminatory by the Circuit Court.

Respectfully submitted,

JAMES P. FALVEY,

LOUIS S. LEBOWITZ,

HENRY W. GORANSON,

Counsel for

The Electric Auto-Lite
Company, Amicus Curiae.

APPENDIX A

STATUTES

*National Labor Relations Act, as amended, 29 U.S.C.,
Sec. 141 et seq.*

"Sec. 157. Rights of employees as to organization, collective bargaining etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a)(3) of this title."

"Sec. 158. Unfair Labor Practices

(a) It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title:

(2) . . .

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: . . .

. . .

(b) It shall be unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 157 of this title: . . . or (B) an employer in the selection of his representatives for the purposes of collective bargaining for the adjustment of grievances;

(2) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section . . . "

. . .

"Sec. 159. Representatives and Elections . . .

(a) Representatives designated or selected for

the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:"

Selective Training and Service Act of 1940, as amended, 50 U.S.C. App., Sec. 308

"Sec. 308(c) Any person who is restored to a position . . . shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority"

APPENDIX B

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Opinions Below.

The opinions delivered in the Court of Appeals are reported in 195 F. 2d 170. The opinion of the District Court has not been reported (R. 26).

Interest of *Amicus Curiae*.

This *amicus curiae*, Chrysler Corporation, has for many years manufactured automobiles, trucks and automotive parts and accessories in many of the States of the United States and abroad. It employs more than 100,000 people for whom the respondent union is the exclusive bargaining representative under Section 9 of the National Labor Relations Act, as amended (29 U. S. C., Sec. 159).

In 1944 the standing of veterans whom Chrysler had not theretofore employed was a subject of intense bargaining between Chrysler and the Union. The parties seemed to agree in principle but did not agree in detail.

In 1945, as more veterans came to work for Chrysler as new employees, and as the end of the war increased the problem, Chrysler and the Union continued to explore the matter. Finally, in contract negotiations in the winter of 1945 and 1946, the parties reached agreement on a clause which appeared in their contract dated January 26, 1946. This clause, substantially in the form to which Ford and the Union later agreed, was as follows:

"29. Veterans of World War II who were not formerly employed by Chrysler Corporation

who possess evidence of satisfactory completion of service and make application for employment within ninety (90) days of their discharge from the United States Armed Forces and meet the other qualifications for reinstatement contained in the Selective Training and Service Act of 1940, as amended, and other applicable laws and regulations, shall, upon completion of thirty (30) days employment, receive seniority credit equivalent to their period of service in the Armed Forces in the event of a layoff during their probationary period, and, upon completion of their probationary period, shall be entered upon the seniority lists of their department or division with seniority credit equivalent to their period of military service plus their probationary period."

Chrysler and the Union kept the clause in their later contracts, dated April 26, 1947, and May 28, 1948. In their contract of May 4, 1950, they froze the standing for seniority that employees had under the clause, but did not renew the clause.

Between January 26, 1946, and May 1, 1949, more than 90,000 veterans who had not previously worked for Chrysler had jobs at one time or another in Chrysler's plants. While normal turnover, which is highest among new employees, has greatly reduced this number, nevertheless, Chrysler judges that perhaps five thousand or more of these veterans still work in its plants, with the seniority they acquired under the three contracts above mentioned. They are scattered all through the seniority lists and affect the standing of tens of thousands of employees with earlier hiring dates. Doubtless, many thousands of

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those who left had at one time or another advantages under the clause and other employees had disadvantages that they would not have had if the clause in question had not existed.

Obviously, a declaration that the clause is void will bring chaos to the seniority standing of Chrysler's employees, in place of the orderly system that now has been in effect for nearly six and one-half years.

This chaos will prevail in hundreds, if not thousands, of other plants in many industries.

If this Court does not correct the judgment of the Court of Appeals, a great multiplicity of actions for damages, in which the effect of the clause upon each of literally hundreds of thousands of employees will be an issue, will result. The petitioner Union, Ford Motor Company and The Electric Auto-Lite Company already are confronted with such actions. Doubtless many more are in the making.

The only duty against "discriminating" by employers arises under the National Labor Relations Act, which forbids discriminating for union activity. It therefore is difficult for us to see how Respondent employees could recover from employers under the clauses in question. Nevertheless, the necessity of revising extensively the seniority rolls, the resulting reshuffling of employees who have been transferred and promoted on the basis of seniority they acquired under the clauses, the flood of grievances that would result and the unrest that would ensue, not to mention the necessity of defending what would be in effect hundreds of thousands of separate suits, would im-

pose staggering and intolerable hardships on the employers as well as upon the unions.

More important than all this, however, would be the effect of the decision, were this Court to allow it to stand, upon the system of collective bargaining in our country. We believe, and we shall show *infra*, that the effect would be to torpedo the National Labor Relations Act and the scheme of collective bargaining that it sets up.

Summary of the Argument.

1. The ruling of the Court of Appeals undermines the whole scheme of the National Labor Relations Act, as amended, and would make impracticable, if not impossible, the kind of collective bargaining that the act requires.

The remedy of the Respondent employees lies in proceedings in their own union to bring about a change in the seniority clauses, or under the National Labor Relations Act to change their bargaining representatives, not by collateral attack in Court on a long-standing, lawful clause of contracts negotiated many years ago pursuant to said Act.

2. If, as the Respondents claim, the clause in question is "null and void and invalid", then the employees have no seniority rights.

filing of this brief have been obtained and filed with the Clerk of the Court. The consent of the attorney for the respondent was requested but was refused. The interest of the Veterans of Foreign Wars of the United States and its reasons for asking for leave to file a brief *amicus curiae* are set forth below.

Movant is an organization, consisting of approximately one million two hundred thousand veterans who have served overseas in one or more of this nation's wars or recognized campaigns and expeditions, and has been chartered by the Congress of the United States (36 USCA 111). Movant was first organized in 1899 and its record for more than fifty years has been one of dedication and service, not only to disabled veterans and the widows and orphans of the deceased, but to the millions of veterans who upon separation from the service seek integration within a peacetime society so that the social and economic dislocation sustained by them upon entry into the service would be reduced to an absolute minimum. Pursuant to this policy, movant has for many years, with particular emphasis on the Post-World War II period, maintained a Division of Employment within the structure of its national headquarters, and has encouraged and fostered the maintenance of Employment Sections in all its subordinate units with the object of hastening the integration of the recently discharged serviceman into civilian employment. The overall objective, as reiterated by its national conventions for many years, has been the placement of the returning serviceman on the civilian "escalator" as nearly as possible at the point he would have occupied had he not been called to the service of the nation in its time of danger.

Movant desires that the accompanying brief be filed on its behalf in order that the Court may have before it the views of a veterans organization whose years of effort in the field of veterans rehabilitation, readjustment, and employment contributed to the decision ultimately reached by petitioners, as well as other similarly inspired, to place the

veteran on the civilian "escalator" with seniority equal to the time he spent in the armed services, notwithstanding that the veteran had not been previously employed.

Petitioners' agreement, the validity of which is the crux of this cause, was the result of a sincere effort on the part of the International Union, UAW-CIO, and the Ford Motor Company, to put into action a well recognized national policy toward the returning veteran. Movant sincerely believes that because of its more than fifty years of experience in the field of veterans benefits it is particularly qualified to present for the Court's consideration a fuller and more complete picture of the genesis and development of this national policy, zealous and patriotic adherence to which by petitioners having resulted in this action. Movant's desire is therefore based on a concern that adequate consideration may not be given to this question unless it is afforded the opportunity of presenting the purely veterans readjustment aspects of the issues involved in this case.

The considerations of public policy toward the questions raised by this cause assume grave proportion in the face of the stepped-up tempo of our defense program which finds thousands of our young men every day being called to the colors to acquire skills and techniques to serve them on a happier day when, with a hastened maturity, they seek their first employment in private industry.

Movant respectfully requests that the motion for leave to file a brief as *amicus curiae* in the instant case be allowed.

Respectfully submitted,

JOHN C. WILLIAMSON,

*Counsel for the Veterans of Foreign
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1025 Connecticut Avenue, N. W.,
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September 12, 1952.

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Supreme Court of the United States.

OCTOBER TERM, 1952.

No. 193.

FORD MOTOR COMPANY,

vs.

Petitioner,

GEORGE HUFFMAN, individually, and on behalf of a
class, etc., *et al.*

No. 194.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT
AND AGRICULTURAL IMPLEMENT WORKERS OF AMER-
ICA, CIO, etc.,

vs.

Petitioner,

GEORGE HUFFMAN, individually, and on behalf of a
class, etc., *et al.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT.

**BRIEF OF CHRYSLER CORPORATION,
AMICUS CURIAE.**

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT.

**BRIEF OF CHRYSLER CORPORATION,
AMICUS CURIAE.**

Chrysler Corporation, as an *amicus curiae*, submits this brief in support of the appeals of Ford Motor Company and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO. Pursuant to Subdivision 9 of Rule XXVII of the Rules of this Court, Chrysler has obtained consent of all the parties hereto to the submission of this brief.

We do not believe this Court should substitute long after the event what it thinks should have been the parties' agreement on seniority when the parties were not under any obligation to enter into any particular kind of agreement on seniority, or for that matter, any agreement on the subject at all.

CONCLUSION.

We submit that the order appealed from should be reversed and the judgment of the District Court reinstated.

Respectfully submitted,

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ARGUMENT.

I.

The ruling of the Court of Appeals undermines the whole scheme of the National Labor Relations Act, as amended, and would make impracticable, if not impossible, the kind of collective bargaining that the Act requires.

The remedy of the Respondent employees lies in proceedings in their own union to bring about a change in the seniority clauses, or under the National Labor Relations Act to change their bargaining representatives, not by collateral attack in court on a long-standing, lawful clause of contracts negotiated many years ago pursuant to said Act.

Section 9 (a) of the National Labor Relations Act provides that representatives whom the majority of the employees in an appropriate bargaining unit designate,

“shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment;” (29 U. S. C., Sec. 159.)

Section 8 (a) (5) makes it an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees. Section 10 empowers the National Labor Relations Board and the courts to force employers to bargain with representatives of their employees.

In passing the Act, Congress did two new and unique things.

First, it gave to labor organizations authority that no law gives to other voluntary associations, namely, authority to bind people who are not members of these organizations, regardless of the wishes of such people, and even to their detriment.

In *J. I. Case Co. v. Labor Board*, 321 U. S. 332 (1943), this Court discussed the nature of collective agreements under the National Labor Relations Act, saying at pages 338-9:

"But it is urged that some employees may lose by the collective agreement, that an individual workman may sometimes have, or be capable of getting, better terms than those obtainable by the group and that his freedom of contract must be respected on that account. . . . The practice and philosophy of collective bargaining looks with suspicion on such individual advantages. . . . The workman is free, if he values his own bargaining position more than that of the group, to vote against representation; but the majority rules, and if it collectivizes the employment bargain, individual advantages or favors will generally in practice go in as a contribution to the collective result. . . ."

Second, Congress imposed on employers a statutory duty to bargain with the exclusive representatives. Ordinarily, the right to refuse to deal is an essential element of bargaining. Thus Congress made compulsory a process that in all other connections is essentially voluntary. Employers must recognize the exclusive representatives, must bargain with them and

must try earnestly to reach agreement. *Labor Board v. Sands Mfg. Co.*, 306 U. S. 332 (1939).

Congress allowed to collective bargainers the utmost latitude in selecting the subjects on which they could bargain and decide. This was necessary under the scheme that Congress set up. It would be anomalous indeed for Congress to give to a union on the one hand exclusive bargaining power and to require an employer, on the other, to bargain with that union, and yet to say, as the Court of Appeals would have it say, that the validity of the bargain must await a ruling from some Court or other body. If this had been the intent of Congress, it would have said so.

If the holding of the Court of Appeals be correct, then the National Labor Relations Act as amended does not mean what it says and what the courts without exception have held it says. The Court of Appeals has held that the union is not the exclusive representative of employees, but merely a preliminary negotiator, with the courts holding the final and exclusive power to say ultimately what the bargain may be. The employer, in this event, although required to bargain in good faith, can never know that the bargain he makes will be valid. He would be forced to go through an always serious, often difficult and sometimes painful ordeal with the knowledge that an individual employee may upset that bargain which presumably, the majority of the members of the "exclusive" representative ratified.

There Was No "Discrimination" Here of a Kind That the Law Condemns.

Congress imposed no limits on the subjects concerning which unions and employers may bargain, or

on the bargain they may reach, except one. The exception is that neither may use the bargain, otherwise than by agreeing to a valid clause compelling membership in the union, to discriminate among employees on the basis of union membership or activity. 29 U. S. C. Secs. 158 (a) (3) and (b) (2). See, for example, *Wallace Corp. v. Labor Board*, 323 U. S. 248 (1944). The instant clause obviously had no such purpose.

This Court has engrafted another exception, holding that, in certain circumstances, a union may not enter into a bargain that discriminates against employees' inherent rights. In *Steele v. L. & N. R. Co.*, 323 U. S. 192 (1944), this Court struck down the contract between the union and the employer which discriminated against negro firemen. But that decision is irrelevant here. In that case, the discrimination involved inherent rights. The present case involves rights that exist only by contract, and only in accordance with the terms of the contract.

Furthermore, in the *Steele* case, negroes whom the union excluded as members and against whom it discriminated because of their race had no voice in its affairs. Mr. Justice Stone emphasized this circumstance at pages 199-202. Here, membership in the respondent union was available to all the plaintiffs. Indeed, the complaint alleges they are members. (R. 3).

We find no case or statute forbidding unions and employers to "discriminate" as between different groups or classes of employees on grounds that do not encourage or discourage union membership or activity or that do not violate inherent rights; and they frequently do discriminate on other grounds.

The Court of Appeals uses the word "discriminate" as though, in all cases, discrimination is evil. This is not so, either in law or in common usage. Webster's International Dictionary, Second Edition, says "to discriminate" means:

"To serve to distinguish; to mark as different, to differentiate.

"To separate (like things) one from another in comprehension or use by discerning minute differences.

"To make a distinction; to distinguish accurately; as to discriminate between fact and fancy; also to use discernment.

"To make a difference in treatment or favor (of one as compared with others); as to discriminate in favor of one's friends; to discriminate against a special class."

The term "discriminate" standing alone is ambiguous. Unless we know the grounds of the discrimination, we cannot judge whether it is proper or improper. Differentiation in good faith, not in a way that the law forbids or in a way that interferes with inherent rights, is not improper.

There is no question here of good faith. There is no question of violating a statute. Nor is there one of violating inherent rights. Seniority rights are not inherent rights. They exist solely by virtue of contract.

Any union that represents a large unit of employees, employed in many crafts and classifications, many departments, many plants, in many localities and dif-

ferent circumstances, has the difficult problem of reconciling differences in the interests of many classes and groups. It is in the union's interest as best it may to reconcile these differences, and to accommodate its policies and practices to the differing and sometimes conflicting interests of various classes or groups that comprise the bargaining unit, or who may become members of the unit.

In doing this, it must weigh the effect on itself of what it does that is to the greater or lesser advantage of one group or class as against another; and it must weigh the effect of what it does on the solidarity of the unit and on the bargaining strength that flows from that solidarity. It is interested in holding itself together and in holding to the greatest extent possible the loyalty of all elements of the unit. Bitter dissidence in a small group it may deem more destructive of its solidarity and bargaining strength than mild disappointment in a larger one. By catering to the wishes of one group, it may insure solidarity that enables it to gain greater advantages for the whole unit.

In the absence, at any rate, of a clear showing of fraud or bad faith on the part of the union's bargainers, or of a violation of statutory, or inherent rights, what justification is there under the National Labor Relations Act or any other law, or in common sense, for a court or other branch of the Government to substitute its judgment for the union's on what is best for the union as a whole, as the Court of Appeals undertakes to do?

A particular group of employees, such as skilled employees comprising a third of a unit, may feel

strongly that they are entitled to a greater wage increase than other employees. If, in order to retain their loyalty, the union negotiates a 5-cent an hour increase for other employees and an 8-cent an hour increase for them, instead of a 6-cent an hour increase for every one, calling upon the majority to make a sacrifice for the minority, may a court at the instance of an individual or of dissident members of the majority substitute its judgment for that of the union and set aside the contract?

And does an employer who agrees to this arrangement at the instance of an exclusive representative with which the law compels him to deal accede to the union's demands at his peril?

When employers and unions agree to a hundred different wage rates for a hundred different classifications, must they be prepared to prove by some particular method of job evaluation that each rate is in exactly correct relation to all other rates?

If a union negotiates a smaller raise for employees of one company than for those of another, must it be prepared to prove differences between the employees or the companies that justified the different raises?

Petitioners have shown that there are many types of seniority systems, by craft or classifications, by departments, by plants or by companies, and that there are different combinations of these systems, departures from them and exceptions to them.

Courts repeatedly have held it within the power of bargaining representatives to negotiate seniority rules differentiating among employees, and to change

the rules from time to time, notwithstanding that the changes affect for better or worse the then current standing of particular individuals or groups. See: *Aeronautical Industrial District Lodge 727 v. Campbell, et al.*, 337 U. S. 521 (1949); *Hartley v. Brotherhood of Railway and Steamship Clerks, etc.*, 283 Mich. 201, 277 N. W. 885 (1938).

Most seniority systems set up an artificial standard for favoring one employee as against others, substituting the accident of the time when each entered a seniority group for other considerations, even more valid ones, in preferring them. Seniority, by its nature, invariably works in favor of one employee as against another.

In great establishments, there is no system of seniority that in and of itself is naturally or necessarily correct, or that affords an inflexible standard by which to measure the correctness of the system. Seniority is a matter of agreement in the light of the circumstances, and it is changed by agreement from time to time in the light of then existing circumstances. It always involves a precise differentiation of groups and individuals in the light of circumstances at the time.

As the end of World War II approached, unions and employers foresaw the influx into the plants of veterans as new employees as women and elderly people resumed their peacetime pursuits. What considerations led unions to include in their contracts clauses crediting veterans who had not worked for particular employers with standing for seniority from the time they entered the armed forces are not of record. The safest thing to assume is that the unions

did not think it wise to have in the plants cohesive, vocal and dissident minorities of veterans not previously employed whose dissatisfaction with their standing under the seniority rules might disrupt the unions and weaken their bargaining position.

The Selective Training and Service Act (50 U. S. C. App. Sec. 308) assured all veterans who returned to their former employment full seniority credit for time they spent in the armed forces. Whom does the law empower to judge and who, indeed, is best qualified to judge the validity of the claim of non-employee veterans that they, too, should receive seniority credit for all time they spent in the armed services? And whom does the law empower to judge, and who is best qualified to judge, the effect upon the union as a whole of recognizing or denying this claim? As between a court and a bargaining agent that the law says is "exclusive" and whom the employer must recognize as such, we submit that the Court easily comes out second.

The Ruling of the Court Below Makes Collective Bargaining Too Perilous a Practice to Engage In.

The Court of Appeals has in effect held that a union and an employer can agree to differing terms and conditions of employment for various elements of a bargaining unit only if they are prepared to show to the satisfaction of a court, by tangible, objective standards and measurable and measured criteria, that the differing circumstances of each group justified different terms for it, and that the agreement in its entirety was for the benefit of the union as a whole.

The Court below thus ignores the practice of unions to submit their proposed collective agreements to

their members for ratification. In the present case, it was entirely foreseeable that the clause in question would affect adversely the interests of the great majority of Ford's employees, consisting both of employees who were not veterans and employees who had left Ford for the armed services and thereafter returned to work. May a dissident minority, or even a majority of the present employees now, years later, reverse the majority that approved the clause and set aside all that the parties did under it?

If these things are so, the collective bargaining that the law compels becomes a lottery, in which bargainners must await the outcome of trials perhaps years later to know what their agreement was, or a strait-jacket in which one cannot safely agree to any differences, as between different groups, as to the terms of employment. In either case, the collective bargaining that our laws seek to foster becomes a wholly impracticable procedure, not a feasible method of fostering industrial peace.

Huffman and the class he purports to represent, like all other employees, had full opportunity, when the union was considering the clauses in question and when the question of ratification was before it, to present their views and to protect what they considered their interests. They have the right now, through proper procedures within their union, to seek a change in the seniority rules. Or they have the alternative right under the National Labor Relations Act to change their bargaining representative or to vote for no representative.

The "discrimination" of which the Respondents complain is not unlawful under any statutory or case

law. The clause is of a kind that the National Labor Relations Act explicitly gives to unions and employers the right and responsibility to deal with. The Court's interference with the parties' exercise of that right and responsibility would open the door to like interference with the whole process of collective bargaining, and would undermine the system of compulsory collective bargaining that the National Labor Relations Act created.

II.

If, as the Respondents claim, the clause in question is "null and void and invalid", then the employees have no seniority rights.

Seniority rights exist only by reason of a contract. The seniority rights that Ford's employees had before Ford and the Union entered into the clause in question expired when the pre-existing seniority clause expired.

If, as the Respondents contend, the present seniority clause is void (R. 32), then neither the Respondents nor any other employees the clause covers have any seniority rights.

The Court may not assume that, if the petitioners had not created the seniority system we find in their contracts, they would have created another system or the same system that existed under some earlier contract or any other particular kind of system. This Court certainly would be going far if it were to rewrite the seniority clause and impose it on the parties

without their consent, retroactively over a period of six years or more.

This, in effect, is what the Respondents are asking this Court to do.

If this Court should require Ford to revise its seniority roster, pursuant to the Respondents' prayer, all employees who would thereby move up on the seniority lists would have claims, retroactively, for advantages that, under the questioned clauses, have gone to veterans who did not work for Ford before entering the armed forces.

As every existing employee was adversely affected every time a veteran not previously employed by the employer was given seniority pursuant to the clause under attack, the revision of the seniority roster required would be stupendous. • In this connection it should be observed that the Court below misconceived the scope of the effect of the clause under consideration. The opinion of the Court of Appeals says (R. 34):

"The question squarely presented is whether the Union and management can by contract create preferential seniority in men not employed when they entered the armed services as against men, also veterans, who were employed when they entered the armed services."

The fact is that the group adversely affected by the clause consists of all employees, veterans and non-veterans alike, whose positions on the seniority roster were lowered by the insertion of one or more veterans not employed by the employer before entering the service.

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Nos. 193 and 194

In the Supreme Court of the United States

OCTOBER TERM, 1952

FORD MOTOR COMPANY, PETITIONER

v.

GEORGE HUFFMAN, ET AL.

and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIR-
CRAFT AND AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, CIO, PETITIONER

v.

GEORGE HUFFMAN, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT

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BOARD AS AMICUS CURIAE

OPINIONS BELOW

The order of the United States District Court for the Western District of Kentucky denying respondent's motion and granting petitioners' motions for summary judgment (R. 26) is un-

reported. The opinion of the Court of Appeals for the Sixth Circuit (R. 30-38) is reported at 195 F. 2d 170.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U. S. C. 1254. The petitions for certiorari were granted on October 13, 1952.

QUESTION PRESENTED

This brief discusses only a single question raised by the petitioning union (No. 194, Pet. p. 2), namely, whether an exclusive bargaining representative commits an unfair labor practice, which the Board has exclusive jurisdiction to remedy, by causing the layoff of particular employees in the bargaining unit in violation of its duty to represent all employees within the bargaining unit fairly and without discrimination.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V., 151, *et seq.*), are set forth in the Appendix, *infra*, pp. 22-23.

STATEMENT

The collective bargaining agreement between the Ford Motor Company, petitioner in No. 193, and the Union, petitioner in No. 194, which covered employees at the Ford plant in Louisville, Kentucky, provided, *inter alia*, that full seniority credit should be given employees for periods

of military service even in the absence of employment at Ford prior to such military service (R. 6, 13, 14, 16-17, 20). On February 21, 1951, respondent Huffman, a Ford employee subject to the contract, filed a complaint in the federal district court, for himself and other employees similarly situated, against Ford and the petitioning Union, requesting a declaratory judgment and injunctive relief for the purpose of invalidating this seniority clause (R. 2-9). The complaint alleged that this provision constituted an unwarranted discrimination against employees whose employment at Ford, like his own, was interrupted by military service, and in favor of employees who had no prior employment record at Ford, but who, because of lengthy military service, were awarded greater seniority and for that reason were in a preferred position when layoffs were made (R. 5-8). Thus, according to the complaint, Huffman and other employees who had accumulated seniority before their military service had frequently been laid off while employees with no previous employment record at Ford, but having greater military service, had continued to work (R. 7-8).

On motions for summary judgment filed by all parties, the district court dismissed the complaint, stating in its order that "The Court finds that said collective bargaining agreement sets up a seniority system which the Court deems not to be arbitrary, discriminatory, or in any respect unlawful" (R. 26).

The court of appeals reversed, holding that the seniority agreement was an invasion of employees' rights under Section 7 of the Act "to bargain collectively through representatives of their own choosing" (R. 36). The court held that this provision "means that in entering into labor contracts the bargainers must make their agreements with a view to the rights of the entire group bound by them, and not enter into agreements which discriminate against one part for the benefit of another" (R. 36). Applying this principle, the court held that the right of Huffman and others in his class to fair representation was violated in this case because the seniority provision incorporated standards which were based on factors having "no relevance to terms and conditions of work or the normal and usual subjects of contracts between union and employer" (R. 37). In support of this holding the court below (R. 37) relied on *Steele v. L. & N. Ry. Co.*, 323 U. S. 192, where this Court held that the duty imposed on the exclusive bargaining agent by the Railway Labor Act not to discriminate against employees in the unit it represented was violated by execution of a collective agreement which differentiated for purposes of employment opportunity on grounds of race.

The court remanded the case to the district court "for further proceedings in accordance with [its] opinion" (R. 38).

DISCUSSION

INTRODUCTION

The sole question in which the Board is interested—whether the Board has exclusive jurisdiction of a complaint which alleges that an exclusive bargaining agent has violated its duty to represent all of its constituents fairly within the meaning of the *Steele* case—is presented on this record by the holding of the court below that the military service standard used in this case for determining seniority is, like a racial standard, one which the *Steele* case precludes an exclusive bargaining agent from adopting, and that application of such a standard violates rights guaranteed employees by Section 7 of the National Labor Relations Act. The Board takes no position on the question whether, in holding the military service standard unfair and discriminatory, the court below properly construed and applied the principles enunciated in the *Steele* decision. If the Court should hold that, where violation by an exclusive bargaining agent of its duty under the *Steele* case results in loss of employment by members of the bargaining unit, the Board has exclusive primary jurisdiction to remedy such violation, then, the Board believes, the question whether adoption of a particular standard constitutes a violation of the duty to accord fair and equal representation should be passed upon by it initially in its quasi-judicial capacity. If, on

the other hand, this Court should hold that the federal district courts are empowered to exercise jurisdiction over violations of this character, the Board does not believe that it should express an opinion on the question whether, on the facts of this case, the petitioning union was properly held to have violated the obligation it owed to members of the bargaining unit under the doctrine of the *Steele* case.

We have set out below the difficulties which, in the Board's opinion, are involved in resolution of the jurisdictional question, and the considerations which the Board believes are relevant in determining whether Congress intended to vest in the Board exclusive primary jurisdiction over controversies of this character. The Board has not heretofore been faced with the necessity of answering this question, and in its view the relevant considerations do not point clearly to a definitive answer. The Board desires, therefore, merely to make it clear that if this Court should decide that it is an unfair labor practice for a labor organization to violate its duty under the *Steele* case, then it is the Board's position that the Board, and not the federal district court, would have primary jurisdiction to remedy such violations.

DOES VIOLATION BY AN EXCLUSIVE BARGAINING AGENT
 OF ITS DUTY TO REPRESENT FAIRLY AND EQUALLY
 ALL EMPLOYEES IN THE BARGAINING UNIT CONSTITUTE AN UNFAIR LABOR PRACTICE WITHIN THE
 MEANING OF SECTION 8 (b) (1) (A), 8 (b) (3),
 OR 8 (a) (1) OF THE ACT?

Like the Railway Labor Act, the National Labor Relations Act imposes on a labor organization which enjoys the statutory status of exclusive bargaining agent, an obligation to represent all employees in the bargaining unit fairly and without discrimination. *Wallace Corp. v. National Labor Relations Board*, 323 U. S. 248, 255; *Hunt v. Crumboch*, 325 U. S. 821, 826; compare *Steele v. Louisville & Nashville Ry. Co.*, 323 U. S. 192, n. 3, p. 202. The court below held that Section 7 of the National Labor Relations Act guarantees to employees a corresponding right to be free from discriminatory representation. Under the Railway Labor Act the right to nondiscriminatory representation, like other employee rights guaranteed by that Act, is enforceable through the district courts.¹ This conclusion follows from the fact that there is no administrative procedure under the Railway Labor Act for enforcing or vindicating the rights it guarantees employees.

¹ *Virginian Ry. Co. v. System Federation No. 40*, 300 U. S. 515; *Texas & N. O. Ry. Co. v. Brotherhood*, 281 U. S. 548.

Steele case, 323 U. S., at pp. 205-207. Under the National Labor Relations Act, however, invasion by employers or labor organizations of rights guaranteed employees in Section 7 is declared to be an unfair labor practice, and such unfair labor practices are remediable in administrative proceedings before the Board. The court below, however, apparently did not consider whether, in view of this difference in scheme and structure between the Railway Labor Act and the National Labor Relations Act, the Board rather than the district courts should have primary jurisdiction to remedy violations of the right, under the National Labor Relations Act, to non-discriminatory representation. Cf. *Far East Conference v. United States*, 342 U. S. 570, 573-576; and cases cited. Without discussion of this question the court assumed that the complainant in this case was entitled to seek redress in the federal district court.

In the Board's view, the question whether the district courts have jurisdiction of actions of the kind involved in this case depends on the resolution of two subsidiary issues: (1) does Section 7 of the Act guarantee to employees the right not to be unfairly discriminated against (within the meaning of the *Steele* case) by their bargaining representative, and (2) is it an unfair labor practice for an exclusive bargaining agent to procure the layoff or discharge of employees on a basis which is unfair within the meaning of

the *Steele* case, and for an employer to make a layoff or discharge as a result of such misuse by the bargaining agent of its statutory authority? If both of these questions are answered in the affirmative, then, for the reasons recently reiterated in this Court's opinion in *Nathanson, Trustee v. National Labor Relations Board*, decided November 10, 1952, the Board believes that the district courts should be held to lack jurisdiction to remedy, in actions by employees, violations of the duty of exclusive bargaining representatives to accord fair and equal representation. On the other hand, if the second question is answered in the negative, then the Act provides no adequate remedy for violation of an exclusive bargaining agent's duty to constituents, and the Board believes that the federal district courts should be held to have jurisdiction to afford redress, just as they have jurisdiction to redress similar violations under the Railway Labor Act.

A. *The scope of Section 7*

This Court has held that the implied duty not to discriminate unfairly against any employees within the bargaining unit arises as the result of conferring statutory power upon a union, as exclusive representative, to bind all employees within the bargaining unit to contractual arrangements made with employers. As the Court stated in *Steele*, 323 U. S., at p. 204, "So long as a labor

union assumes to act as the statutory representative of a craft, it cannot rightly refuse to perform the duty, which is inseparable from the power of representation conferred upon it, to represent the entire membership of the [unit] * * * without hostile discrimination, fairly, impartially, and in good faith." See also *Wallace Corp. v. National Labor Relations Board*, 323 U. S. 248, 255.

In the Railway Labor Act, the principal provision which grants exclusive authority to the representative chosen by the majority of employees to act for all employees within the unit is Section 2, Fourth, which reads as follows, (quoted in 323 U. S., at p. 199):

Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. * * *

In addition, Section 2, Sixth, and Seventh, provide that the representative may bargain for "the working conditions of employees 'as a class,'" and Section 1, Sixth defines "representative" as meaning "Any person or * * * labor union * * * designated [by employees] to act * * * for them" (*ibid.*).

The counterpart of these majority rule provisions in the National Labor Relations Act may

be found in most explicit form in Section 9 (a), which reads in applicable part, "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining. * * *" In addition, however, Section 7 of the Act, in language nearly identical with that found in Section 2 Fourth of the Railway Labor Act (p. 10, *supra*), provides that "Employees shall have the right to self-organization * * * [and] to bargain collectively through representatives of their own choosing. * * *" To sustain the holding of the court below that Section 7 confers upon employees the right not to be unfairly discriminated against by their representative, the quoted portion of this Section must be read to comprehend the right to bargain through a representative which does not improperly discriminate. Put otherwise, discriminatory representation, in the view of the court below, prevents employees from enjoying true collective bargaining. The validity of this analysis need not rest upon the assumption that Section 7, taken by itself, confers on the representative chosen by the majority of the employees an exclusive bargaining status. For in guaranteeing employees the right to "bargain" through a "representative," Section 7, to be consistent with other parts of the statute, clearly

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, 151, *et seq.*), are as follows:

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

* * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) To restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7: * * *

* * * *

(3) To refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of Section 9 (a);

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10.

(c) The testimony taken by such members, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hearing argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice; and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.

**BRIEF
for
the C.I.O.
AS
AMICUS CURIAE**

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IN THE
Supreme Court of the United States

October Term, 1952

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, CIO, Petitioner**

vs.

GEORGE HUFFMAN, INDIVIDUALLY, ETC., ET AL.,
Respondent

BRIEF FOR THE

**CONGRESS OF INDUSTRIAL ORGANIZATIONS
AS AMICUS CURIAE**

ARTHUR J. GOLDBERG
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contemplates that the "representative" shall have authority to bargain on behalf of all.²

B. The scope of Section 8 (b) (1) (A) and 8 (a) (1)

The importance of deciding whether Section 7 comprehends the right of employees to nondiscriminatory representation arises from the fact that Section 8 (b) (1) (A) declares it to be an unfair labor practice for a labor organization to "restrain" or "coerce" employees "in the exercise of the rights guaranteed in Section 7." Accordingly, if the right to nondiscriminatory representation is guaranteed by Section 7, and if discriminatory conduct by a bargaining agent which results in layoff or other economic detriment to employees may be said to "restrain" or "coerce" employees in the exercise of that right, then such conduct amounts to an unfair labor practice within the meaning of Section 8 (b) (1) (A). Moreover, Section 8 (a) (1) prohibits employers from interfering with, restraining or coercing employees in the exercise of rights guaranteed by Section 7. Thus, if a labor organization violates rights guaranteed by Section 7

² Thus, an employer who is willing to recognize a union as the representative of its members, but not as exclusive representative for the entire bargaining unit, restrains and coerces employees in the exercise of their rights guaranteed by Section 7 of the Act. See, e. g., *May Department Stores Co. v. National Labor Relations Board*, 326 U. S. 376, 383-384; *Medo Photo Supply Corp. v. National Labor Relations Board*, 321 U. S. 678, 683-684.

when, in violation of its duty under the *Steele* case, it induces an employer to lay off or discharge members of the bargaining unit on an unfair or discriminatory basis, it would follow that the employer, by acquiescing in the union's misuse of its bargaining powers, and affecting the job status of employees pursuant thereto, would thereby infringe rights protected by Section 7, in violation of Section 8 (a) (1).³

The Board has never had occasion to decide whether a labor organization which, acting discriminatorily within the meaning of the *Steele* case, denies job opportunities to certain employees in the bargaining unit, thereby "restrains" or "coerces" such employees in the exercise of a right guaranteed them by Section 7. We believe that if the right of nondiscriminatory representation is deemed to be included in Section 7, then the language of Section 8 (b) (1) (A), on its face, is broad enough to comprehend action by a labor organization, in violation of that right, which results in denying employees job opportunities, or in causing them to be demoted. Where labor organizations have utilized their control over job opportunities to deny jobs to employees in violation of rights manifestly comprehended by Section 7, *e. g.*, the right not to be a member

³ Cf. *National Labor Relations Board v. Graham Ship Repair*, 159 F. 2d 787, 788 (C. A. 9); *National Labor Relations Board v. Hudson Motor Car Co.*, 128 F. 2d 528, 532-533 (C. A. 6); *National Labor Relations Board v. Gluek Brewing Co.*, 144 F. 2d 847, 853-854 (C. A. 8).

of a labor organization, the Board has held that such conduct by the union violates Section 8 (b) (1) (A), and that the employer's acquiescence therein violates Section 8 (a) (1). *Clara-Val Packing Co.*, 87 NLRB 703, 704-705, enforcement denied on other grounds, 191 F. 2d 556 (C. A. 9). Upon finding a violation of such a right, the Board is authorized to issue a cease and desist order, requiring the employer and the labor organization responsible for the loss of employment, to take "such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." Section 10 (c) of the Act. The broad powers of relief conferred by this Section (see *Phelps Dodge Corp. v. National Labor Relations Board*, 313 U. S. 177, 194) permit a full and adequate remedy against labor organizations and employers who impinge upon the rights of employees guaranteed by Section 7.⁴ Consequently, the Board would be em-

⁴ Moreover, although the Board has held that it is not authorized to order back pay for violations of Section 8 (b) (1) (A) accomplished by labor unions through blocking employees' ingress to their place of employment, because such an award "would be in the nature of damages" (*Colonial Hardwood Flooring Co.*, 84 NLRB 563, 565), it has emphasized that it is fully appropriate to require unions to pay back pay where "losses in pay [are] suffered by [employees] because of severance of or interference with the tenure or terms of the employment relationship." *Ibid.*, pp. 565-566. Accordingly, in the Board's view, back pay would be authorized in a situation where restraint and coercion caused employees the loss of their jobs (*Steele* case, 323 U. S. 192), demotion (*Tunstall v. Bro. of Firemen*, 323 U. S. 210; cf.

powered to afford adequate relief to employees who are victimized by discriminatory representation practices.

However, the absence of any indication in the legislative history that Congress intended by enacting Section 8 (b) (1) (A) to provide an administrative remedy for conduct by a labor organization which violates its statutory obligation of equal representation; leads to serious doubt whether Sections 7 and 8 (b) (1) (A) should be so construed. Thus, although the *Steele* case was decided more than two and one-half years before the enactment of the 1947 amendments, Congressional consideration of Sections 7 and 8 (b) (1) (A) at that time included no reference, so far as our research reveals, to the problem of nondiscriminatory representation. The kind of union conduct which the legislative debates and committee reports show that Congress hoped to reach by Section 8 (b) (1) (A) included "threats of reprisal against employees and their families in the course of organizing campaigns * * * [and] mass picketing and other violence,"⁵ "making threats or false promises or false statements,"⁶ "a threat that if a man did not join, the union would raise the initiation fee * * * [or that] the union would get a closed-shop agreement and

Graham v. Bro. of Firemen, 338 U. S. 232), or as in this case, layoffs resulting from inferior seniority standing.

⁵ Sen. Rep. No. 105, 80th Cong., 1st Sess., p. 50.

⁶ 93 Cong. Rec. 4016.

keep him from working at all," and "the coercion of goon squads and other strong-arm organizing techniques which a few unions use today." As the Board has stated, "This legislative history strongly suggests that Congress was interested in eliminating physical violence and intimidation by unions or their representatives, as well as the use by unions of threats of economic action against specific individuals in an effort to compel them to join." *National Maritime Union*, 78 N. L. R. B. 971, 985. While this legislative history shows that Congress wished to protect employees against economic as well as physical reprisal by unions generally, it does not indicate that Congress contemplated that the right of employees to receive fair and equal treatment from their bargaining representative would be brought within the scope of that protection. Cf. *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 490, 491, 501; *Hawaii v. Mankichi*, 190 U. S. 197, 212.

We think this fact particularly weighty since the consequence of holding that Section 8 (b) (1) (A) protects employees against unequal representation is to transfer jurisdiction to remedy infringements of that right by exclusive bargaining agents from the district courts to the Board. Since the Wagner Act contained no provisions prohibiting unfair labor practices by labor organi-

⁷ 93 Cong. Rec. 4435.

⁸ 93 Cong. Rec. A.2252.

zations, it would appear that under that Act, as under the Railway Labor Act, jurisdiction to redress violations of the duty to accord equal representation was vested in the district courts. If Congress had consciously intended, by the enactment of Section 8 (b) (1) (A) to transfer jurisdiction to remedy such violations from the district courts to the Board, the legislative history might be expected to reveal some evidence of such an intention.

In these circumstances, the Board urges only that if this Court should construe Section 7 as comprehending the right to fair and equal representation and should further find that Section 8 (b) (1) (A) and Section 8 (a) (1) are applicable to violations of this character, the traditional exclusiveness of the Board's jurisdiction over unfair labor practices should obtain.

C. The scope of Section 8 (b) (3)

Arguably, the action of an exclusive bargaining representative in refusing to execute a contract unless the employer agrees to provisions which unfairly discriminate against a portion of the bargaining unit might constitute a refusal to bargain in violation of Section 8 (b) (3).⁹ In

⁹ This would be the consequence of taking at face value the sole reference to non-discriminatory representation which we have been able to find in the legislative history of the 1947 amendments. Thus, Representative Hartley, in describing on the floor of the House the rights bestowed on em-

applying this Section, the Board has consistently held that the insistence by an employee representative, over the objections of an employer, upon a contract provision "which is unlawful or inconsistent with the basic policy of the Act, is a refusal to bargain in violation of the Act." *American Radio Association*, 82 N. L. R. B. 1344, 1346. This principle has been applied most often in situations where the insistence has been on some form of illegal union security arrangement,¹⁰ but no valid reason appears why it should not be equally applicable where the arrangement sought is violative of other policies of the Act,¹¹ including that which prohibits discriminatory representation. In such cases the Board might properly order a labor organization to cease and desist from such conduct. See cases cited in n. 10, and 11, *supra*.

However, this remedy would clearly be inadequate to redress violations of the duty to accord ployees by H. R. 3020, the forerunner of the amendments in the House, stated that the provision requiring unions to bargain in good faith with employers (Section 8 (b) (2) of H. R. 3020) guaranteed to an employee "the right to require the union that is his bargaining agent to represent him without discriminating against him in any way or for any reason, even if he is not a member of the union." 593 Cong. Rec. 3425. No further congressional discussion of this assertion occurred. Compare Note, 65 Harv. Law Rev. 490, n. 46, p. 494.

¹⁰ See e. g., *National Maritime Union*, 78 N. L. R. B. 971; *Great Atlantic & Pacific Tea Co.*, 81 N. L. R. B. 1052; *Essex County District Council*, 95 N. L. R. B. 969, 972.

¹¹ Compare *Chicago Typographical Union No. 16*, 86 N. L. R. B. 1041, 1042-1043.

equal representation where, as in this case, the employer did not object but agreed to the union's proposal. Where illegal provisions are included in a contract by voluntary agreement of the employer and the union, the Board has held that there is no violation of Section 8 (b) (3).¹²

D. Apart from the possible remedy under Section 8 (b) (1) (A), and Section 8 (a) (1), suggested above, the Act does not provide an administrative remedy for violation of the duty to afford non-discriminatory representation adequate to divest the district courts of jurisdiction

While the Board has not had occasion to decide whether its jurisdiction to adjudicate unfair labor practice cases includes authority to hear cases involving violations of a bargaining agent's duty to accord impartial representation to the employees for whom it speaks, it has recognized and enforced this duty in its administration of representation proceedings. Thus, because Section 9 (a) of the Act grants a certified bargaining agent the exclusive power of representation within the unit, the Board has indicated that it will not issue a certification under Section 9 (c), and that it will revoke an outstanding certification, where it is shown that the majority choice

¹² See, *Longshoremen's and Warehousemen's Union*, 90 N. L. R. B. 1021, 1023; cf. *Nassau County Typographical Union #915*, 87 N. L. R. B. 1263.

does not comply with the obligation of fair representation which is concomitant with its exclusive status. See, *e. g.*, *Larus & Brother Co.*, 62 N. L. R. B. 1075, 1081-1083; *Carter Mfg. Co.*, 59 N. L. R. B. 804, 805-806; *RKO Pictures*, 61 N. L. R. B. 112, 116; *Bethlehem Alameda Shipyard, Inc.*, 53 N. L. R. B. 999, 1016; *Monsieur Henri Wines, Ltd.*, 44 N. L. R. B. 1310. This practice, of course, would not be affected either by a holding that the Board has exclusive jurisdiction to remedy violations of this obligation, or that the district courts have such jurisdiction.

However, the relief obtainable from the Board in representation cases is limited to depriving unions of the benefit of certifications. A transgressing union remains free to enter into discriminatory contracts and to inflict economic injury on employees in the bargaining unit by unfair exertion of its power of representation. Accordingly, as with the similar authority over representation cases which is exercised by the Mediation Board under the Railway Labor Act, this remedy is not alone adequate to deprive district courts of jurisdiction in unfair representation cases. See *Steele* case, *supra*, 323 U. S. at pp. 205, 207.

CONCLUSION

For the reasons stated, if this Court should conclude that the allegations of the complaint in this case, if proved, establish a violation of either Section 8 (b) (1) (A), 8 (a) (1) or 8 (b) (3), and

that the Board possesses authority adequately to remedy such violation, we respectfully submit that the judgment of the court below should be reversed and the cause remanded for dismissal on the ground that the Board has exclusive primary jurisdiction over the subject matter. On the other hand, if the Court affirms the jurisdiction of the district court, we respectfully submit that a violation by an exclusive representative of its statutory duty to represent the employees for whom it bargains fairly and impartially be held not to constitute an unfair labor practice.

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DECEMBER 1952.

The Board itself has never passed on the question of whether discriminatory action by a statutory collective bargaining representative outside of the legitimate scope of its bargaining territory would constitute an unfair labor practice. The Board thus far has determined only that, in the exercise of its powers under Section 9 to certify the collective bargaining representative, it will not regard itself as being precluded from taking appropriate remedial action such as a re-determination of the bargaining unit or a revocation of the certification where it finds discrimination being practiced. (*RKO Radio Pictures, Inc.*, 61 NLRB 112.)

The Board, in fact, has never used the power which it asserted in the *RKO* case and in similar cases insofar as we are aware. It certainly has not yet decided that it has the additional power to prevent discrimination by determining that such discrimination constitutes an unfair labor practice under the Section 8(b)(1) declaration that it is an unfair labor practice for a union to "restrain or coerce . . . employees in the exercise of the rights guaranteed in Section 7."

We frankly do not know whether the Board will or should find that improper discrimination between employees by a collective bargaining representative constitutes such restraint or coercion against those employees as to fall within Section 8(b)(1). It seems to us that the question is a difficult one which the Board should be permitted to decide in the first instance.

If discrimination which violates Section 7 does not also constitute an unfair labor practice in violation of Section 8(b)(1)—an undecided question upon which we express no opinion—the only remedy before the Board for illegal discrimination seems to us to be quite inappropriate. If a union does discriminate unlawfully, an appropriate remedy would be one which would rectify the discrimination. But the only remedy which the Board itself has as yet asserted is withdrawal of the union certification. Such withdrawal would give small solace to the employees against whom the discrimination had been directed, since the employer would be free to continue it in the absence of any collective bargaining representative. At the same time, the union might be punished

far beyond the requirements of the situation. Withdrawal of certification would be a death sentence for the union involved, a remedy which may be far out of proportion to the wrong found to be committed against the employees and which would not, in any case, prevent continuation of the wrong.

The argument that the federal courts have no primary jurisdiction to enforce the requirement, implied in the Act, that a union exercise its statutory functions without discrimination must, therefore, rest either on the proposition that such discrimination constitutes an unfair labor practice or upon the proposition that the withdrawal of certification is an appropriate and exclusive remedy. Both of these propositions, it seems to us, are difficult ones which should be determined, at least in the first instance, by the National Labor Relations Board. An attempt by this Court at this time to sketch out the whole outline of the Board's jurisdiction in this kind of a case would, we think, be most undesirable. Yet the Court cannot make the negative finding that a federal District Court does not have jurisdiction unless it first affirmatively delineates the Board's jurisdiction and then holds that jurisdiction to be exclusive. Since the case can, we believe, be disposed of without deciding these questions, we urge the Court to limit its decision and to leave these troublesome questions for later determination in a case in which such determination is necessary.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1952

No. 194

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, CIO, Petitioner**

vs.

**GEORGE HUFFMAN, INDIVIDUALLY, ETC., ET AL.,
Respondent**

**BRIEF FOR THE
CONGRESS OF INDUSTRIAL ORGANIZATIONS
AS AMICUS CURIAE**

CONSENT TO FILE

This brief *amicus curiae* is submitted by the Congress of Industrial Organizations with the consent of the parties, as provided for in Rule 27 of the Rules of this Court. It is submitted by the CIO because the decision of the Court of Appeals for the Sixth Circuit, if permitted to stand, will have a serious and perhaps disastrous effect upon the conduct of collective bargaining negotiations by all unions in the United States of America.

THE DECISION BELOW

It is important to recognize that the decision of the Sixth Circuit in this case has nothing to do with veterans' reemployment rights as established by the Selective Service and Training Act, 50 U.S.C., Sec. 308. Although Huffman's suit

was based alternatively on the claim that his layoff was a violation of his rights as a veteran under that Act, this alternative claim was rejected both by the District Court and by the Court of Appeals. The claim upon which the Court of Appeals held that he was entitled to relief was based solely on Section 7 of the National Labor Relations Act, as amended.

The opinion of the Court below does refer repeatedly to the alleged discrimination against veterans like Huffman, but its decision will afford relief not only to veterans, but to all employees having a length of continuous service equal to that for which Huffman is given credit under the collective bargaining agreement (including, in Huffman's case, the period of time he served in the armed forces). The suit was, in fact, brought by Huffman on behalf of a group of 275 employees at the Louisville plant of the Ford Motor Company. These employees, denominated "Class A" in the complaint (R. 5), were not alleged to be veterans. They were alleged to have only one common characteristic—that their place on the seniority roster was lower than that of the "Class B" employees (R. 5). The "Class B" employees are all alleged to be veterans. Their common characteristic is that they were all hired by Ford after they had completed military service and after the "Class A" employees were hired. They had, however, entered military service before the "Class A" employees were hired by Ford. They, therefore, were placed on the seniority roster ahead of the "Class A" employees because the collective bargaining contract gave them seniority credit, when they were hired after their discharges, for the period of their prior military service.

The decision of the Sixth Circuit, upholding the claim of the "Class A" employees against this contract provision is not, therefore, a decision upholding the rights of veterans against non-veterans, or even veterans against other veterans. It upholds a claim of the employees generally against certain veterans who were given special treatment because of their service. It is not based on the Selective Service and Training Act. It rests solely upon the finding that the special seniority credit given to veterans, not employed by Ford prior to their military service, constitutes discrimination against all of the

other employees whose job rights are thereby diminished, and the conclusion of law that such discrimination constitutes a violation of Section 7 of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

1. Whether the federal courts have primary jurisdiction to enforce the statutory obligation of unions not to discriminate in the administration of the collective bargaining authority granted to them by Section 7 of the National Labor Relations Act, as amended.

2. Whether the particular seniority system here involved constitutes discrimination under the federal Act.

ARGUMENT

I. *There Is Here No Illegal Discrimination.*

The substantive issue here presented is well stated by counsel for Huffman in his brief in opposition to the petition for certiorari. It is there said on pages 11-12: "The gravamen of the complaint is that the scope of the bargaining went outside the province of the matters within the legitimate interest of the bargainers and into forbidden territory."

The issue thus posed as to what is a legitimate interest of the bargainers in a collective bargaining relationship, and what, on the other hand, is forbidden territory, is a fundamental and important one. The resolution of that issue involves considerations having meaning not only to unions and their members but to our entire society.

What has happened, in this case, is this: The nation had passed through a war. The community recognized that it owed a debt to those who had served it in time of war. Appeals were made by the government and other agencies to the various groups which compose our society that they rise above their selfish interests and voluntarily make special provision to compensate those who had served in the war for the loss of status and opportunity which they necessarily suffered because of that service.

Certain statutory rules were passed which afforded to veterans a minimum protection of their existing relative seniority

status, but those rules were not enough. Particularly, veterans who had entered military service before they had opportunity to establish a place on the seniority rolls still remained at a disadvantage compared to men, like Huffman and the other "Class A" employees here, who went to work while these veterans were in service. It was urged, but not ordered, that private interests and private groups supplement these statutory rules by giving additional protection to such returning servicemen.

The Statement of Employment Principles issued by the Retraining and Reemployment Administration of the Department of Labor¹ is not evidence of authority in conflict with the decision of the Sixth Circuit. Its significance is precisely that it carried no authority. It was an appeal, formulated by the government after consultation with representatives of labor, industry and the veterans, for voluntary action to accomplish certain objectives which were agreed upon as desirable from the viewpoint of the community as a whole. The contract provision held to be illegal here was a direct response to that appeal. What the contract did was to give special seniority credit, and hence job protection against other employees, to those whom the community asked be so protected.

One of the central problems of our times is posed by the necessity of either persuading or coercing the particular interest groups, which necessarily make up our whole community, to consider, in the pursuit of their own interests, the interests of the community. Coercion by law means governmental interference with the conduct of private relationships. Such interference becomes necessary precisely to the degree that private groups fail to exercise their freedom from regulation with an awareness of their responsibilities, not only to themselves and their constituents, but also to the scale of values of the larger community.

We have in this case precisely the kind of voluntary action by a group in an effort to coordinate its own interests with the national interest that is so often sought for and so rarely achieved. We need not agree with the UAW in their method of recognizing community values. But the decision of the Court

¹ Appendix B to the UAW's petition for certiorari in No. 114.

of Appeals for the Sixth Circuit here is, in effect, that the action of the UAW violates the law for the very reason that it takes into consideration such community values in addition to the narrow individual interests of the members of the group.

The significance of the decision of the Court of Appeals in this case, therefore, rises far beyond any question of veterans rights. The question at issue really is whether unions venture into "forbidden territory" when they recognize the social values of the community and negotiate provisions with employers which give recognition to those values by conferring increased benefits upon those who, in the community scale of values, are deserving of such protection. The Court of Appeals says that unions may not do this. Contract provisions negotiated by unions, it says, are invalid unless they have "relevance to terms and conditions of work or the normal and usual subjects of contracts between union and employer" (R. 37). Attempts to satisfy broader social interests are described as "well-meaning desires" (R. 35) which will not justify any difference in the distribution of the benefits negotiated by the Union. Such contracts are "not justified by the lack of definite malice or hostility" (R. 35). If the effect is to give some employees greater benefits than others "the end result . . . is the same as if there had been deliberate hostility" (R. 36).

The philosophy underlying the decision of the Court of Appeals would clearly identify such union action as a no-strike pledge during time of war as outside the legitimate scope of the bargaining agent's authority. Such an action would not itself constitute discrimination, under the Court's decision, because it would not involve some special benefit to a particular class of employee as against another but, rather, the subordination of the interests of all to the national interest. But union action to provide special benefits for the aged, the crippled, those with large numbers of dependents, and similar groups which unions may feel it is socially desirable to give advantage to, do involve special benefits for some at the expense of others. A good union, conscious of the needs of society and its responsibilities to the community, will attempt in its own way, guided by the will of its membership, to give

recognition to the claims for preference which it may believe these groups legitimately have. But according to the Court of Appeals for the Sixth Circuit, if it embodies this preference in a collective bargaining contract, it violates the National Labor Relations Act.

The question of seniority which is involved here is one in which the choice between individuals, which unions necessarily must make, is particularly obvious. Seniority systems are sets of rules to govern the choice between individuals in filling a limited number of jobs. Normally unions strive for the principle that, in making this choice, length of service shall govern on such matters as layoff and promotion. Apparently the modification of this principle necessarily involved in an agreement upon seniority units would pass the test set forth by the Court of Appeals. A layoff of Employee A with 20 years of service, while Employee B with one year of service remains working, is apparently acceptable to the Court of Appeals if the distinction between them is that they are in different seniority units, since such a distinction is required for efficient production.

A similar difference in treatment based on the fact that the junior employee is a union official also meets the test of the Sixth Circuit. But the reason stated is that the preferred employee in this case is in a special position to provide benefits to all of the members of the union. Absent that reason, no matter what the social desirability of the preference may be, it is to be forbidden as discriminatory.

What happens, under such reasoning, to other grants of special seniority rights to particular classes? Many labor contracts provide, for example, that employees who become partially disabled shall have a special right to cross seniority units and thus displace employees holding jobs within the newly limited capabilities of the disabled employees. Is this "discrimination"? Would it be illegal to give married employees with dependents preference, on layoff, over bachelors? Was it illegal to give veterans who volunteered credit for the time spent in military service at the time when the Selective Service Act provided such protection only for draftees?

All unions may not agree upon the contractual desirability

of adopting these systems of employee preference. We do not say that the special system of preference for veterans negotiated by the UAW is the only permissible system, or even the most desirable system. The essence of the kind of voluntary action necessary for the preservation of our free society is that each group be given some latitude in determining for itself how it will recognize and meet the needs of the community. Certain kinds of action are forbidden as anti-social. Other actions may be required by law, as the minimum necessary to meet the needs of the community. But, in the vast area between these extremes, reliance must be had in a free society upon voluntary recognition by the individuals and groups that make up the community of the interests and values of that community. We do say, therefore, that a union is not required by law to abjure consideration of what it believes in good faith, and on good evidence, is the national interest, nor required to limit itself solely to the equal advancement of the narrow interests of each of its members. So long as a union does not offend the basic values of the community, it should be free to negotiate with employers for whatever distribution of benefits it believes in good faith will best serve both the individual interests of its members and the community.

Seen in this light, the seniority system here condemned by the Court of Appeals lies at the opposite pole from that condemned by this Court in *Steele v. Louisville & Nashville Railroad Co.*, 323 U. S. 192. The objective sought to be achieved by the union there was properly condemned, not because the union's view was too broad, but because it was too narrow. It is not simply a difference between distinctions among employees based on reasonable and upon unreasonable grounds. Here special benefits were given to some pursuant to a broad program recognized as desirable by considerable segments of the community. There, the effort was to impose a limitation on some members of the group, a limitation so socially undesirable as to be forbidden to governmental authority by the Constitution itself.

We frankly do not think that it is remotely possible that this Court will agree with the Court of Appeals that the special benefits given to veterans in the contract negotiated

by the UAW and the Ford Motor Company constitute illegal discrimination against all other employees adversely affected. Our primary concern is that this Court, in reversing the Court of Appeals, should recognize the social values necessarily involved here.

The CIO has attempted to build unions conscious of the needs not only of their members but of the community in which these members live. Unions do serve the immediate needs of their members. But they also owe allegiance to, and should attempt to serve, the nation as a whole. Recognition of the right of unions to contract with employers for special benefits to veterans is, therefore, not enough. What deserves recognition, particularly in view of the language of this Court in the *Steele* case, upon which the Court below relied (R. 37), is the right of unions, on behalf of their membership, to serve, as best they see them, social purposes broader than the direct hand to mouth improvement of the wages, hours and working conditions of their individual members.

II. *The Court Should Not Decide the Jurisdictional Question Presented by the Petition for Certiorari.*

The UAW argues strongly that the Court of Appeals, in deciding this case, has usurped the jurisdiction of the National Labor Relations Board. In the view of the UAW, the primary jurisdiction of the National Labor Relations Board to determine violations of the federal Act is exclusive and the decision below should, therefore, be reversed, irrespective of whether there in fact exists in this case any violation of Section 7 of the Act.

It is, of course, true that solution of the jurisdictional question which has been raised here is prior in logic to discussion of the merits of the case. And, if the Court should feel that it is required to pass upon the jurisdictional question, we would agree with the contentions of the UAW that the federal courts do not have primary jurisdiction in this kind of a case. But we believe that there are cogent reasons why the Court should reverse the decision below solely on the ground that the Court of Appeals erred in finding discrimination in this case without passing upon its jurisdiction to make that finding.

Our reason for urging this course upon the Court is that, in our view, the substantive question of discrimination is relatively easy of solution and will dispose of the case. The jurisdictional question, however, poses very difficult questions in a relatively uncharted field, any resolution of which may prove ultimately to create serious problems in the administration of the federal Act.

In order to determine whether or not the federal district court had jurisdiction to make the primary determination as to discrimination, the Court must make several determinations as to the meaning and application of the National Labor Relations Act without the aid of any prior consideration or determination of these questions by the agency charged with administering that Act. We believe the Court should avoid decision of those questions unless it is necessary that they be decided in order to dispose of the case before the Court.

In this branch of the argument we assume as given the proposition that discrimination between employees by the statutory collective bargaining representative constitutes a violation of the statute. Although the point has never been decided by this Court under the National Labor Relations Act, as amended, it has been decided under the Railway Labor Act. (*Steele v. Louisville & Nashville Railroad Co.*, 323 U.S. 192). We assume that the rule of that case with regard to the substantive question of discrimination is equally applicable to the National Labor Relations Act, as amended.

The assumption that discrimination would violate Section 7 of the National Labor Relations Act, however, does not necessarily require the conclusion that the exclusive remedy for this violation lies with the National Labor Relations Board. While it is true, as stated by the UAW, that the Act, unlike the Railway Labor Act, does provide for administrative remedies for unfair labor practices, it is also true that the National Labor Relations Board is not expressly given authority to police violations of Section 7. Section 10(a) of the Act empowers the Board to prevent the unfair labor practices listed in Section 8 of the Act. But it is not necessarily true that all violations of Section 7 also constitute unfair labor practices under Section 8.